

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal  
Representative of the Estate of  
Justin Nicholas Miller,

Appellant,

v.

CasePro, Inc.,

Respondent.

Record on Appeal: Volume I  
**PAGES 1-500**

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**SC Court of Appeals**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

REBECCA DELANEY, *as Personal*  
*Representative of the Estate of Justin*  
*Nicholas Miller,*

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT  
COUNTY,

Defendants.

No. 9:13-cv-00476-DCN

**ORDER**

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CASEPRO, INC.,

Third-Party Plaintiff,

vs.

UNITED STATES OF AMERICA,

Third-Party Defendant.

---

This matter is before the court on plaintiff's motion to remand. For the reasons set forth below, the court grants plaintiff's motion and remands this case to the Beaufort County Court of Common Pleas.

**I. BACKGROUND**

This case arises from the death of Justin Miller on February 24, 2012. Plaintiff Rebecca Delaney represents Miller's estate.<sup>1</sup> Defendant CasePro, Inc. (CasePro)

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<sup>1</sup> On June 17, 2013, the decedent's brother, Christopher D. Miller, filed a motion to intervene, claiming to be the appropriate personal representative of the decedent's estate. This motion was not ripe at the time of the court's hearing on plaintiff's motion to remand.



employs medical personnel at the Naval Hospital Beaufort (the Naval Hospital) that are alleged to be responsible for Miller's death.

On November 1, 2012, plaintiff filed suit against defendants CasePro and Beaufort County in the Beaufort County Court of Common Pleas, bringing claims for negligence, wrongful death, and negligent undertaking of duty. On January 9, 2013, CasePro filed an answer and third-party complaint against the United States, seeking equitable and contractual indemnification of any damages owed to plaintiff. CasePro also filed a motion to dismiss. On February 21, 2013, the United States filed a Notice of Removal in federal court. As a result, the state court stayed consideration of CasePro's motion to dismiss.

The United States claims that it did not receive service of the third-party complaint until January 22, 2013. In its Notice of Removal, it alleges that the "third-party action constitutes an action that is removable to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331." Gov't's Notice of Removal ¶ 5.<sup>2</sup>

On March 4, 2013, plaintiff filed a motion to remand, arguing that the government's removal was improper. On March 18, 2013, the United States filed a motion to dismiss the third-party complaint for lack of subject matter jurisdiction. The court heard argument on these motions on July 1, 2013.

In her complaint, plaintiff alleges that on February 24, 2012, Justin Miller was struck and killed by a fire truck driven by Calvin Hunt, a former United States Marine

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<sup>2</sup> Although the United States only alleges that the "third-party action" is removable to federal court, it seeks to remove "the entire civil action, including the Complaint and Third-Party Complaint." Notice of Removal ¶ 4.

Corps corporal suffering from service-related PTSD. Compl. ¶¶ 1, 6-7. Prior to the accident, Edward Ray, a Beaufort County employee and Veterans Affairs Officer, received a call from Hunt's grandmother to report erratic behavior by Hunt. Id. ¶ 8. Ray visited Hunt in the morning of February 24, 2012. Id. ¶ 9. Approximately three hours later, Ray escorted Hunt to the Naval Hospital, which CasePro was responsible for staffing pursuant to a contract with the Naval Medical Logistics Command. Id. ¶¶ 15, 17.

Plaintiff alleges that Hunt conveyed a desire to hurt himself and others, not only in front of Ray, but also while in the presence and control of Naval Hospital healthcare personnel. Id. ¶¶ 20-22, 24. The healthcare personnel became aware that Hunt posed a serious danger of violence. Id. ¶ 21. Ray and the healthcare personnel began to escort Hunt to the Emergency Room. Id. ¶ 29. Along the way, they allowed Hunt to step outside and get a breath of fresh air. Id. ¶ 30. Upon exiting the Naval Hospital, Hunt stripped naked and climbed into an unoccupied fire truck. Id. ¶¶ 32, 34. Hunt stole the truck, drove it onto the highway, and fatally struck Justin Miller as he was walking across the street. Id. ¶¶ 34-35.

Plaintiff claims that CasePro and Beaufort County were negligent by breaching their duty of care owed to Justin Miller. In its third-party complaint, CasePro asserts that the United States operates the Naval Hospital and contractually agreed to maintain day-to-day control and supervision of CasePro personnel at the Hospital. Third-Party Compl. ¶¶ 75-76. According to CasePro, the United States should ultimately be held liable for any damages owed to plaintiff.

## **II. STANDARD**

The party seeking to remove a case from state to federal court—here, the United States—bears the burden of demonstrating that jurisdiction is proper at the time the petition for removal is filed. Caterpillar Inc. v. Lewis, 519 U.S. 61, 73 (1996). If federal jurisdiction is doubtful, remand is necessary. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994); see Marshall v. Manville Sales Corp., 6 F.3d 229, 232 (4th Cir. 1993) (noting Congress’s “clear intention to restrict removal and to resolve all doubts about the propriety of removal in favor of retained state court jurisdiction”).

## **III. DISCUSSION**

The United States bears the burden of demonstrating federal jurisdiction. In its Notice of Removal, it claims that removal is proper under 28 U.S.C. §§ 1441 and 1446, and that this court has original jurisdiction pursuant to 28 U.S.C. § 1331.

Section 1441(a) provides,

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). Under § 1446, the Notice of Removal must be filed “within 30 days after the receipt by the defendant” of the complaint. Id. § 1446(b)(1).

A majority of courts have held that a third-party defendant may not remove a case to federal court under § 1441(a). See Galen-Med, Inc. v. Owens, 41 F. Supp. 2d 611, 614 (W.D. Va. 1999) (“The majority view [is] that third-party defendants are not ‘defendants’ for purposes of removal under 28 U.S.C.A. § 1441(a).”); see also Lewis v. Windsor Door Co., 926 F.2d 729, 733-34 (8th Cir. 1991) (holding that district court lacked subject matter jurisdiction “because the United States, as third-party defendant, was without

authority to remove the case”); Brashear v. Baligian, No. 03-1796, 2003 WL 22717748, at \*2 (D.S.C. Oct. 28, 2003) (“[T]he majority of the rather considerable number of cases decided by the courts of appeal and the district courts have concluded that a third-party defendant . . . is not entitled to remove the case.” (internal quotation marks omitted)). Based on this authority, the United States may not remove the case under § 1441(a).

The minority of courts to allow removal by a third-party defendant rely on 28 U.S.C. § 1441(c)(1), which provides that a civil action may be removed if it “includes a claim arising under the Constitution, laws, or treaties of the United States.” Courts have permitted removal under § 1441(c)(1) “when the third party complaint asserts a separate and independent cause of action.” Greenville Hosp. Sys. v. Betts, No. 10-1986, 2010 WL 3169197, at \*2 (D.S.C. Aug. 4, 2010). Courts have further held that a third-party claim for indemnity is *not* “separate and independent” from an original claim of negligence. See id. (holding that “a claim for indemnity is not a ‘separate and independent’ cause of action, [but] rather it is ‘incidental or ancillary to the main claim’”); Poisson v. Maintenance Pace Setters, Inc., 696 F. Supp. 1141, 1143-44 (E.D. Mich. 1988) (holding that a third-party claim for contribution and indemnity was not separate and independent from the primary complaint of negligence).

Here, CasePro’s indemnification claim against the government is “not separate and independent” from plaintiff’s negligence claims, nor does it “arise under” any federal laws. Therefore, the case was improperly removed under § 1441.<sup>3</sup>

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<sup>3</sup> At oral argument, the government conceded this point. In addition, plaintiff and the government agreed that at the least, the original complaint should be severed and remanded to state court. See Gov’t’s Resp. Opp’n Pl.’s Mot. Remand 1 (“[W]e . . . believe the underlying state court case should be severed and remanded.”).

Recognizing the flaw in its Notice of Removal, the government attempts to invoke its authority under 28 U.S.C. § 1442 to remove only the third-party complaint brought by CasePro. “Under 28 U.S.C. § 1442(a), the United States may remove to federal court any case to which it is named a party defendant.” Salery v. United States, 373 F. App’x 29, 30 (11th Cir. 2010). This alternative argument was first asserted on March 27, 2013, when the government filed a response in opposition to plaintiff’s motion to remand. See Gov’t’s Resp. Opp’n Pl.’s Mot. Remand 2.

“Prior to the expiration of the 30-day period for removal . . . , the defendants may freely amend the notice of removal required by Section 1446(b).” 14C Wright & Miller et al., Fed. Prac. & Proc. Juris. § 3733 (4th ed. 2013) (footnote omitted). “Thereafter, however, most cases indicate that defendants may amend the notice only to set out more specifically the grounds for removal that *already have been stated*, albeit imperfectly, in the original notice.” Id. (emphasis added). “[D]efendants may not add completely new grounds for removal or furnish missing allegations, even if the court rejects the first-proffered basis of removal.” Id.

To illustrate, in Sullivan v. BNSF Ry. Co., 447 F. Supp. 2d 1092 (D. Ariz. 2006), the plaintiff brought a wrongful death action in state court against the defendant railroad. The defendant removed the case to federal court, asserting federal question jurisdiction. Finding that it lacked federal question jurisdiction, the federal district court found remand necessary. Importantly, the court further refused to consider the defendant’s alternative ground for removal—based on § 1442(a)(1), removal of claims brought against a federal officer—because it was raised for the first time in response to the plaintiff’s motion to remand. Id. at 1099-1100.

In this case, the government did not rely on § 1442 as a basis for removal until over a month after its time for removal had expired. Like in Sullivan, the government is not entitled to a second bite at the apple because it relies on a completely new ground for removal wholly absent from its Notice of Removal. Id. at 1099 (“[a]lleging new grounds for removal constitutes an allegation of substance” that may not be considered); see also Hinojosa v. Perez, 214 F. Supp. 2d 703, 707 (S.D. Tex. 2002) (“It would be a substantial injustice to allow Defendants to remove a case on one ground and then, when faced with a serious challenge to that ground, attempt to justify removal on an entirely different, and untimely, ground.”).<sup>4</sup>

For these reasons, the government lacks authority to remove this case to federal court under 28 U.S.C. § 1441, and the court will not consider its belated attempt to remove the third-party complaint under § 1442. Therefore, the case must be remanded to state court.

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<sup>4</sup> Numerous courts have remanded claims to state court in similar circumstances. See, e.g., Phillips v. BJ’s Wholesale Club, Inc., 591 F. Supp. 2d 822, 825 (E.D. Va. 2008) (holding that “belated allegation” for removal did not provide basis for federal jurisdiction because it was not raised until defendant’s response to plaintiff’s motion to remand, “well beyond the thirty-day time limit for removal”); Lastih v. Elk Corp. of Ala., 140 F. Supp. 2d 166, 168 (D. Conn. 2001) (“A defendant may not amend its notice of removal after the thirty days elapses to remedy a substantive defect in its removal petition.”); Smiley v. Citibank (South Dakota), N.A., 863 F. Supp. 1156, 1161 (C.D. Cal. 1993) (rejecting defendant’s alternative ground for removal where it “discovered that the original ground on which it sought removal was baseless and tried to substitute a completely separate and distinct ground to take its place”); Barnhill v. Ins. Co. of N.A., 130 F.R.D. 46, 51 (D.S.C. 1990) (noting that courts routinely “deny leave to amend to supply missing allegations or to supply new allegations” after the thirty-day statutory period for removal).

**IV. CONCLUSION**

Resolving all doubts in favor of state court jurisdiction, as it must do, the court finds that remand is required. Marshall, 6 F.3d at 232. Accordingly, the court **GRANTS** plaintiff's motion to remand.<sup>5</sup>

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

**DAVID C. NORTON**  
**UNITED STATES DISTRICT JUDGE**

**July 2, 2013**  
**Charleston, South Carolina**

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<sup>5</sup> Based on this ruling, all pending motions in this case may be decided by the state court upon remand.

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

13 NOV 12 PM 3:21

THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

REBECCA DELANEY, as the Personal  
Representative of the Estate of JUSTIN  
NICHOLAS MILLER,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT COUNTY

Defendants.

CASE NO. 2012-CP-07-03782

ORDER

This matter comes before the Court on Defendant CasePro, Inc.'s Amended Motion to Dismiss, which was filed in the above captioned case on August 5, 2013. A hearing was held before me in Beaufort County, South Carolina on October 29, 2013.

"A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint and [the court] must presume all well-pled facts to be true." Gressette v. South Carolina Electric & Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally and the trial court. . . must presume all well pled facts to be true so that substantial justice is done between the parties." Overcash v. S.C. Elect. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). "Where allegations of the complaint give rise to competing inferences on a question of material fact, dismissal under Rule 12(b)(6), SCRCP, is not appropriate." Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993).



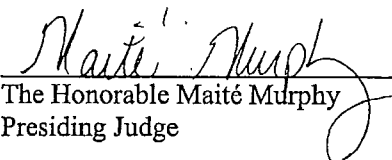
In its Amended Motion to Dismiss, Defendant CasePro, Inc. argues that "Plaintiff has failed to state a cause of action against Defendant CasePro and cannot recover from Defendant CasePro because CasePro cannot be held vicariously liable for the actions of the healthcare workers at Beaufort Naval Hospital." Specifically, Defendant argues that it should be dismissed because, "pursuant to CasePro's contract with the United States government, CasePro did not have the right to control the activities of the healthcare workers." However, it is undisputed that the workers in question were employees of CasePro, Inc. and the South Carolina Supreme Court has recognized that "an employer may direct his employee to go upon the premises of another and perform work there under the general supervision of the other person without severing the employment relation between the employer and the employee." Parker v. Williams & Madjanik, Inc., 269 S.C. 662, 665-666, 239 S.E.2d 487 (1977).

After considering the submitted memoranda and oral arguments of both parties, the Court finds that the allegations in the Complaint give rise to competing inferences on a question of material fact which precludes dismissal under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Based on the foregoing, the Court **DENIES** Defendant CasePro Inc.'s Amended Motion to Dismiss.

**IT IS SO ORDERED.**

November 6, 2013  
St. George, South Carolina

  
The Honorable Maité Murphy  
Presiding Judge

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT  
CASE NO: 2012-CP-07-03782

REBECCA DELANEY, as Personal  
Representative of the Estate of Justin  
Nicholas Miller,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT  
COUNTY

Defendants.

**ORDER**

CASEPRO, INC.,  
Third-Party Plaintiff,

vs.

The United States of America,  
Third-Party Defendant.

This matter comes before the Court on Third-Party Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction, which was filed in the United States District Court of South Carolina on March 18, 2013, and Remanded to this Honorable Court for disposition on July 2, 2013. The parties were afforded an opportunity to supplement their original briefs, which are now made a part of the record. A hearing was held before me in Beaufort County, South Carolina on October 29, 2013.

Subject matter jurisdiction is "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994).

The United States, as sovereign, is immune from suit save as it consents to be sued. *Frahm v. United States*, 492 F.3d 258, 262 (4th Cir. 2007) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit. *FDIC v. Myer*, 510 U.S. 471, 475 (1994). Sovereign immunity is jurisdictional

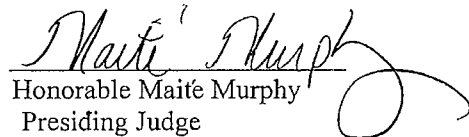
in nature, *id.*, and terms of the United States' consent to be sued in any court define that court's jurisdiction to entertain suit. *Id.* (Quoting *Sherwood* at 586.) See also *Richards v. United States*, 176 F.3d 652, 654 (3rd Cir.) *Rehearing En Banc* denied, 180 F.3d 564 (3rd Cir. 1999). (Sovereign immunity not only protects the United States from liability, it deprives a court of subject matter jurisdiction over claims against the United States.)

A waiver of sovereign immunity must be unequivocally expressed in statutory text and will not be implied. *Lane v. Peña*, 518 U.S. 187, 192 (1996). Waivers of sovereign immunity must be strictly construed in favor of the sovereign. *Welch v. United States*, 409 F.3d 646, 651 (4th Cir. 2005). It is the burden of the plaintiff to show that an unequivocal waiver of sovereign immunity exists, and if that burden is not met, the claim must be dismissed. *Id.* at 651. In its Third-Party Complaint against the government, CasePro, Inc. failed to plead or identify any waiver of sovereign immunity for this Court to want of jurisdiction.

Based on the foregoing, the Court **GRANTS** Third-Party Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1).

**IT IS SO ORDERED.**

November 15, 2013  
Beaufort, South Carolina

  
Honorable Maite Murphy  
Presiding Judge



U.S. Department of Justice

United States Attorney

District of South Carolina

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Reply to: Charleston

November 20, 2013

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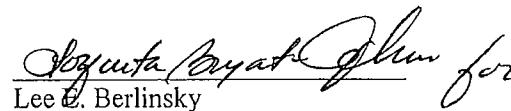
Dear Clerk:

Enclosed please find the a signed Order in **Estate of Justin N. Miller v. Casepro, Inc., Beaufort County and United States of America**, Case No.: 2012-CP-07-03782 for filing. Please file stamp the attached copies and return in the enclosed envelope.

Thank you for your attention to this matter.

WILLIAM N. NETTLES  
UNITED STATES ATTORNEY

BY:

  
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Assistant U.S. Attorney  
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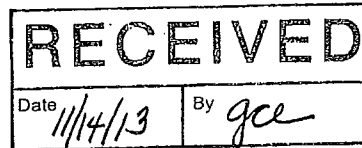
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Reply to: Charleston

November 12, 2013

The Honorable Maité D. Murphy  
5200 E Jim Bilton Blvd.  
St. George, SC 29477-8020



RE: Estate of Justin N. Miller v. Casepro, Inc., Beaufort County and United States of America, Case No.: 2012-CP-07-03782

Dear Judge Murphy:

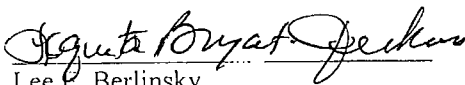
As requested, enclosed please find a proposed Order reflecting your ruling on Third Party Defendant United States of America's Motion to Dismiss in the above-captioned matter.

If you would prefer this order in electronic format, please let us know. Thank you for your attention to this matter and your courtesy.

Sincerely,

WILLIAM N. NETTLES  
UNITED STATES ATTORNEY

By:

  
Lee C. Berlinsky  
Assistant United States Attorney

LEB/lbj

Enclosures

cc: T. David Hoyle  
Michael D. Freeman, Esquire  
Doug MacKelcan, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rebecca Delaney, as the Personal  
Representative of the Estate of Justin  
Nicholas Miller,

PLAINTIFF,

v.

CasePro, Inc. and South Carolina State  
Office of Veterans' Affairs,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-07-03782

ORDER

2014 NOV 14 PM 2:53  
CLERK OF COURT  
J. H. HARRIS, JR.  
CLERK OF COURT

This case comes before me on Defendant South Carolina Division of Veterans Affairs (SCDVA)'s motion for summary judgment against the Plaintiff, Rebecca Delaney as the personal representative of the estate of Justin Miller (hereinafter "Plaintiff"). Oral arguments were held by the Court on October 6, 2014 in Beaufort County. Counsel for all parties were present at the hearing.

#### Findings of Fact

This case arises out of an incident involving the death of Justin Miller on February 24, 2012. A U.S Marine Corp corporal Calvin Hunt ("Hunt") had been subject to a recent court-martial and had been reassigned to appellate leave pending his military appeal. The record reflects that, on February 23, 2012, Hunt's grandmother, Claretha Hunt, contacted Edward Ray ("Ray"), the Beaufort County Veterans Affairs Officer ("CVAO"), whom she knew as a friend of the family. She asked Ray to meet with Hunt to counsel him on available veterans' assistance. Ray agreed to meet with Hunt on February 24, 2012 at 10:00am. Ray

conducted a standard counseling VA benefits session and determined that Hunt was still considered to be on active duty pending his court-martial appeal, which therefore made him ineligible for veterans' services. However, Hunt also asked Ray for help obtaining a new Armed Forces Identification Card and for assistance in filling his prescriptions. Ray contacted the Beaufort Naval Hospital and made an appointment for Hunt at the Managed Care Unit in order for Hunt to get his medications. At around 2:00pm, Ray met Hunt at the Naval Hospital and sat with him during the initial screening. During the initial screening, when asked if he was a danger to himself or others, Hunt answered in the affirmative. At that time, Hunt and Ray were escorted to the emergency room where Hunt was seen by employees of CasePro, Inc., including Dr. Christian Jansen, and to whom Hunt again indicated that he wanted to hurt himself and others. Dr. Jansen and nurses Joe McDonald and Janice McDonald then had the opportunity to review Hunt's medical records which indicated that Hunt had a history of significant mental health issues. While waiting in the emergency room, Hunt asked Ray, who in turn asked CasePro, Inc. nurse Joe McDonald if he could step outside to get some fresh air. Nurse McDonald answered in the affirmative. With this permission, Hunt and Ray went outside to the loading dock of the emergency room where Hunt began running towards the main gate of the hospital. Ray initially attempted to follow him, but due to his age and physical condition he could not keep up. Ray discovered a pile of clothes on the main road leading to the gate, which he determined to be Hunt's. Ray proceeded on to the main gate and informed the gate personnel that Hunt had fled the hospital. While at the gate, he was told that Hunt had stolen a fire truck.

After Hunt absconded with the fire truck, he began driving down Ribaut Road in Beaufort. It was during that time that he struck a number of vehicles, injuring several people and ultimately striking pedestrian Justin Miller, killing him. Hunt was arrested on the scene and his criminal charges are still pending. Since the incident, Ray has passed away. The Plaintiff brought this claim against the South Carolina State Office of Veterans' Affairs (properly identified as the South Carolina Division of Veterans Affairs and hereinafter referred to as "SCDVA"), alleging that SCDVA is vicariously liable for the negligence, gross negligence, disregard of policies and procedures by CVAO Edward Ray, who allowed Hunt to escape from the Naval Hospital. Specifically, Plaintiff alleges that Ray voluntarily undertook a duty with respect to Ray. However, because Ray died prior to the commencement of discovery in this case, there is no admissible evidence in the record – nor does Plaintiff have any way to obtain admissible evidence – as to what Ray actually undertook to do.

#### Conclusions of Law

The Defendant presents a four pronged compounding argument supporting its motion for summary judgment. First, the Defendant asserts that it cannot be liable for the actions of Ray, as Ray was not employed by the Defendant. Second, regardless of who employed Ray, the acts undertaken by Ray subsequent to the determination of Hunt's active duty service status were outside the scope and course of Ray's employment as a CVAO. Third, Defendant argues that even if the acts were taken within the scope and course of Ray's employment, there exists no evidence regarding what duty was owed to the Plaintiff in this situation, nor how such a duty may have been breached by the conduct or omissions of



Ray. Finally, the Defendant asserts that even in the event a duty is demonstrated and a breach of that duty is proven as alleged in the Plaintiff's complaint, such liability is precluded by the South Carolina Tort Claims Act. Because I find the latter three arguments of the Defendant merit a grant of summary judgment in this case as explained further herein, I find it unnecessary to rule on the Defendant's first argument regarding the existence of an employment relationship between the SCDVA and Ray.

**I. Hunt was not eligible for VA benefits and therefore any actions taken by the CVAO after determination of Hunt's service status were outside the scope and course of his duties.**

The provision of assistance to qualified veterans in the state of South Carolina through the South Carolina Division of Veterans Affairs is governed by and through S.C. Code 25-11-10 *et. seq.* In particular, S.C. Code 25-11-40 defines a "veteran" as "a person who served on active duty for a period of more than one hundred eighty days and was discharged or released from such service active duty with an honorable discharge or, if one hundred eighty days or less, was discharged or released from service active duty because of service-connected disability." S.C. Code 25-11-40(A).<sup>1</sup> This incident took place on February 24, 2012. At the time of this incident, Hunt was subject to a court-martial for misconduct during his service, related to various charges for which he had been prosecuted by the Department of the Navy for violations under the Uniform Code of Military Justice. While he had been convicted, he had been placed on Involuntary Appellate Leave awaiting review of his court-

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<sup>1</sup> The Plaintiff in opposition to this motion cites several other definitions of "veteran" that exist in various sections of the South Carolina Code of Laws. However, I note that none of the cited sections would expand upon this definition of "veteran" such to include Hunt's service status as such. In addition, Plaintiff's Counsel conceded at the Hearing that Hunt was not a veteran if he was still an active duty member of the United States Marine Corps.

martial starting August 19, 2011. According to his orders, “[u]pon completion of the appellate review, copies of the decision of the appellate courts, and all other action taken thereon will be forwarded to your current leave address. In the event a punitive discharge is affirmed and clemency action, if appropriate, has been completed, separation processing will be completed without your presence. Appropriate discharge documentation and other related documents will be forwarded to your most recent leave address.”

The Plaintiff argues that Ray identified himself, either through indicia or nametags denoting his position, or verbally to various treating individuals at BNHI, that he was a VA Officer. The Plaintiff therefore asserts that such is sufficient to create an inference that Ray was acting within the scope and course of his duties. The Plaintiff argues that Ray’s conduct could have expanded his official role beyond the scope of assisting veterans, into the realm of rendering assistance to active duty military personnel, or in the alternative, created a quasi-veteran status for Hunt based upon his continued assistance beyond the determination of Hunt’s active duty status.

Ray’s employer, as a state governmental agency is entitled to the protections afforded by the South Carolina Tort Claims Act, (“SCTCA”) S.C. Code § 15-78-10, *et. seq.* Specifically, the SCTCA contains a provision that enumerates exceptions to the general waiver of state immunity. S.C. Code 15,78-60(17) provides that governmental entity is not liable for a loss resulting from “employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” “For a government employee to be acting within the scope of his official duty or

employment, the employee must be (1) acting in and about the official business of the government entity, and (2) performing official duties.” Wade v. Berkeley County, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct.App. 1998)(internal citations omitted). Under the SCTCA, liability of this Defendant can only be established by a threshold determination that Ray’s employer owed some sort of duty to Hunt and failed to meet that duty in its dealings with him, which proximately led to the Plaintiff’s injuries and damage. Therefore, the Plaintiff must show that the actions of the CVAO were in accordance with the performance of some duty or responsibility the CVAO had under his authority in assisting veterans with disability claims. The issue of whether Hunt fit the definition of a veteran is determinative. The Defendant offers with its motion the affidavit of Carl Wedler, the current CVAO for Beaufort County, who was appointed to replace Ray after he passed away. According to Wedler’s testimony, “[t]he job of the [CVAO] is to process veterans claims for disability benefits.” The CVAO is “not charged or authorized, nor is it the job of [the CVAO] office to assist or otherwise provide services for active duty military personnel.” Plaintiff has not come forward with affidavits in opposition to these facts. Nor has Plaintiff offered any evidence that at the time of the Hunt’s elopement from the Naval Hospital that Ray was performing any “official duties.” In fact, based on the Court’s review of the record, Ray was merely a bystander during the entire time Hunt was in the emergency department.

Based on the foregoing, it is clear that Ray’s duties to Hunt ended as soon as he established that Hunt was active duty military personnel and therefore not eligible for veterans benefits. Nothing Ray did with respect to Hunt after he determined that Hunt was ineligible for veterans benefits was in furtherance of his business as a veterans affairs officer.

(See Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (S.C. 1990); “One factor [in determining the scope of employment] is whether the employee was acting in furtherance of the employer’s business when the accident happened.) Because the acts of Ray with respect to Hunt while at the Naval Hospital were outside the scope and course of his duties as CVAO, his employer is entitled to immunity for those acts under the provisions of the South Carolina Tort Claims Act.

**II. Summary Judgment is proper under the South Carolina Tort Claims Act S.C. Code § 15-78-60(25).**

The liability of the Defendant based upon the Plaintiff’s Amended Complaint is premised upon the Plaintiff’s allegation that Ray had the ability to “monitor, supervise and/or control” Hunt. The Plaintiff claims that Ray negligently allowed Hunt to elope from the Naval Hospital resulting in the Plaintiff’s injuries. The Court notes that Hunt left the emergency room with Ray with the express permission of CasePro, Inc. nurse Joe McDonald. This is after Hunt had been seen by the doctor in charge of the emergency room during that shift, Dr. Jansen. In contrast, it is unclear what additional steps Ray could have taken in this incident to prevent Hunt from leaving the Naval Hospital. Plaintiff’s Counsel was unable at the hearing to identify any such steps and the Court again notes that even if Ray undertook a duty, there is no admissible evidence as to what that duty was because of Ray’s untimely death.

Furthermore, S.C. Code § 15-78-60(25) provides governmental immunity from suit for any “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate or client of any

governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” Thus, the Plaintiff must offer evidence, not only of simple negligence, but of gross negligence to survive summary judgment. In the Amended Complaint, the Plaintiff alleges that the CVAO had the ability and duty to “monitor, supervise and/or control” Hunt, and failed to do so which led to the decedent’s death. Furthermore the Plaintiff alleges that such duty was undertaken and performed in a grossly negligent manner. The Plaintiff’s assertion of liability upon the CVAO inherently fails as a matter of pleading. The Plaintiff asserts that Hunt was being serviced by Ray within the scope and course of his duties as CVAO, and that Ray had the duty to “monitor, supervise and/or control” Hunt. Even if the Court were inclined to expand the CVAO responsibility in this case beyond the solely the service of qualified veterans claims, based upon the Plaintiff’s pleadings, an absence of evidence – because there is no testimony from Ray – regarding the duty owed or the grossly negligent breach thereof compels summary judgment based upon the governmental immunities provided under S.C. Code § 15-78-60(25).

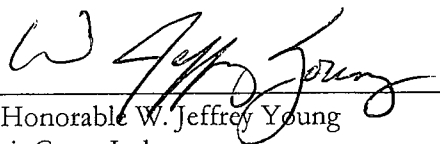
**III. Summary Judgment is appropriate under the South Carolina Tort Claims Act S.C. Code § 15-78-60(20).**

Finally, the Defendant asserts that it is entitled to summary judgment based upon S.C. Code § 15-78-60(20), which provides governmental immunity for any acts or omissions of a person “other than an employee, including but not limited to the criminal actions of third persons.” Defendant argues that the decedent’s death is a direct and proximate result of the criminal acts of Hunt in stealing the fire truck and using it in the commission of

further crimes beyond the foreseeability and control of the CVAO.<sup>2</sup> The Plaintiff makes no allegation that Ray was in any way involved with the theft of the fire truck or the usage of the vehicle in the commission of the subsequent criminal acts. Based on this, summary judgment is appropriate under this section of the SCTCA.

Based on the foregoing, summary judgment on behalf of the South Carolina Division of Veterans Affairs is GRANTED.

IT IS SO ORDERED.

  
The Honorable W. Jeffrey Young  
Circuit Court Judge  
Fourteenth Judicial Circuit

Nov 6  
October 6, 2014  
Beaufort, South Carolina  
Sumter

<sup>2</sup> The Court does not necessarily find that Hunt's actions were the sole cause of the Plaintiff's injuries. Instead, for purposes of the SCTCA, all that is necessary for governmental immunity is that a criminal act of a third person is a proximate cause. Whether the actions or inactions of persons other than Hunt are also a proximate cause is not currently before this Court. See, e.g., Player v. Thompson, 259 S.C. 600, 606, 193 S.E.2d 531, 533 - 534 (1972) (holding that "[p]roximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence").

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

REBECCA DELANEY, *as personal  
representative of the Estate of Justin  
Nicholas Miller,*

Plaintiff,

v.

CASEPRO, INC.,

Defendant.

No. 9:14-cv-4355-DCN

**ORDER**

This matter is before the court on a motion to remand filed by plaintiff Rebecca Delaney, as personal representative of the Estate of Justin Nicholas Miller (“Delaney”). For the reasons set forth below, the court grants Delaney’s motion and remands the case to state court.

**I. BACKGROUND**

This case arises out of a February 24, 2012 incident in which Calvin Hunt (“Hunt”), who was being treated by an employee of defendant CasePro, Inc. (“CasePro”) at the Beaufort Naval Hospital, walked out of the hospital, stole a fire truck, and proceeded to run over pedestrian Justin Miller (“Miller”) as Miller was crossing the road on foot. On November 1, 2012, Delaney brought suit in state court against CasePro and Beaufort County.<sup>1</sup> On February 21, 2014, Delaney amended her complaint, replacing Beaufort County with the South Carolina State Office of Veterans Affairs (“SCDVA”). On August 26, 2014, SCDVA filed a motion for summary judgment, to which Delaney

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<sup>1</sup> Delaney also has a separate action on behalf of Miller’s estate pending in this court against the United States and the United States Naval Hospital.

responded. The state court heard oral argument on October 6, 2014 and granted the motion on November 6, 2014.

On November 10, 2014, CasePro filed a notice of removal pursuant to 28 U.S.C. §§ 1441 and 1446. On December 10, 2014, Delaney filed a motion to remand. CasePro responded on January 27, 2015 and Delaney filed a reply on February 6, 2015. This matter has been fully briefed and is ripe for the court's review.

## **II. DISCUSSION**

A defendant has a statutory right to remove to federal court any civil action brought in state court over which “the district courts of the United States have original jurisdiction . . . .” 28 U.S.C. § 1441(a); Davis v. N.C. Dep’t of Corr., 48 F.3d 134, 138 (4th Cir. 1995). Generally, a notice of removal must be filed within 30 days after the defendant receives the initial pleading setting forth the claim for relief. 28 U.S.C. § 1446(b)(1). If the case stated by the initial pleading is not removable, “a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). However, if federal jurisdiction is based on diversity pursuant to 28 U.S.C § 1332, as is the case here, removal is subject to a statutory limitation: a defendant may not remove a case “more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C § 1446(c).

If it appears that removal was improper, a party can move to remand the case to state court “within 30 days after the filing of the notice of removal . . . .” 28 U.S.C.



§ 1447(c). When removal is challenged, the defendant has the burden of establishing federal jurisdiction. Mulcahey v. Columbia Organic Chem. Co., Inc., 29 F.3d 148, 151 (4th Cir. 1994). Because federal courts are courts of limited jurisdiction, removal raises federalism concerns and must be strictly construed in favor of state court jurisdiction. Id. “If federal jurisdiction is doubtful, a remand is necessary.” Id.

The parties do not dispute that they are diverse, that this case could not have been brought in state court as originally filed, or that CasePro filed its removal notice more than one year after the commencement of this action in state court. Rather, the sole issue before the court is whether Delaney, by alleging causes of action against SCDVA, acted in bad faith to prevent removal.

As recently noted by another court in this district, the Fourth Circuit has not addressed this issue, and only a handful of district courts in the circuit have weighed the bad faith exception in section 1446. Mansilla-Gomez v. Mid-S. Erectors, Inc., No. 0:14-cv-00308, 2014 WL 1347485, at \*2 (D.S.C. Apr. 3, 2014); see also McDonald-Lerner v. Neurocare Associates, P.A., 2014 WL 1356602 (D. Md. Apr. 4, 2014) (finding that the defendants failed to make a sufficient showing that the plaintiffs acted in bad faith when they voluntarily dismissed certain parties more than a year after commencement of the action); Brown v. Wal-Mart Stores, Inc., 2014 WL 60044 (W.D. Va. Jan. 7, 2014) (finding bad faith where the plaintiff deliberately delayed providing a defendant with notice that the claim exceeded \$75,000); Watts v. RMO Holdings, Ltd., 2012 WL 3860738 (S.D. W. Va. Sept. 5, 2012) (finding no evidence or indication of bad faith on the part of the plaintiffs). In a different context, another court in this district noted that “[a]lthough the term ‘bad faith’ is not defined in the Federal Rules of Civil Procedure,

courts have held that the term ‘bad faith’ connotes an action taken without any colorable legal or factual basis.” Rutherford v. Cannon, No. 8:09-cv-2137, 2010 WL 3475283, at \*1 (D.S.C. Sept. 2, 2010).

CasePro’s argument that Delaney acted in bad faith is based entirely on the fact that the state court granted summary judgment on Delaney’s claims against SCDVA. In doing so, the state court apparently held that Delaney did not have even a mere scintilla of evidence against SCDVA.<sup>2</sup> CasePro argues, therefore, that Delaney’s actions in bringing the suit against SCDVA “suggest a deliberate attempt to include an in-state defendant in the case for the sole purpose of defeating complete diversity and preventing removal . . . .” Def.’s Resp. 4 (emphasis added).

Additionally, in their removal notice, CasePro cites Nele v. TJX Companies, Inc., for the proposition that “‘bad faith’ can take the form of fraudulent joinder of a defendant to defeat diversity.” 2013 WL 3305269, at \*3 (E.D. Penn. July 1, 2013). The doctrine of fraudulent joinder allows a federal court to “disregard, for jurisdiction purposes, the citizenship of certain [in-state] defendants, assume jurisdiction over a case, dismiss th[ose] defendants, and thereby retain jurisdiction.”<sup>3</sup> Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999). The party asserting fraudulent joinder has the “heavy burden” to “demonstrate either outright fraud in the plaintiff’s pleading or that there is no possibility

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<sup>2</sup> Neither party attaches the state court order granting summary judgment, but the South Carolina Supreme Court has held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009).

<sup>3</sup> “The term ‘fraudulent joinder’ is a bit misleading, inasmuch as the doctrine requires neither a showing of fraud . . . nor joinder.” Mayes, 198 F.3d at 466 n.8. “In fact, it is irrelevant whether the defendants were ‘joined’ to the case or originally included as defendants; rather, the doctrine is potentially applicable to each defendant named by the plaintiff either in the original complaint or anytime prior to removal.” Id.

that the plaintiff would be able to establish a cause of action against the in-state defendant in state court, . . . even after resolving all issues of law and fact in the plaintiff's favor.” Hartley v. CSX Transp., Inc., 187 F.3d 422, 424 (4th Cir. 1999) (internal quotation marks and citation omitted) (emphasis in original). This standard is even more favorable to the plaintiff than the motion to dismiss standard under Rule 12(b)(6). Id. As always, the court must “resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.” Id. at 425 (internal quotation marks omitted).

While the state court judge ruled against Delaney on SCDVA's motion for summary judgment, “[a] claim need not ultimately succeed to defeat removal; only a possibility of a right to relief need be asserted.” Marshall v. Manville Sales Corp., 6 F.3d 229, 233 (4th Cir. 1993). In other words, “a defendant is not fraudulently joined simply because the claims against him did not ‘ultimately succeed.’” Day v. Liberty Mut. Fire Ins. Co., 2013 WL 1890725, at \*4 (N.D. W. Va. May 6, 2013). As a result, a defendant “cannot satisfy its burden of demonstrating fraudulent joinder merely by pointing to the fact that the state court has ruled against [the plaintiff] on the merits of his claim.” Id. (citation omitted).

CasePro has not met their burden of showing bad faith, whether by fraudulent joinder or otherwise. Delaney vigorously, albeit unsuccessfully, contested SCDVA's motion for summary judgment in the state court. Notably, Edward Ray, the veterans' affairs officer who accompanied Hunt to the Naval Hospital on the day of the incident, passed away before he could be deposed. In fact, he was the only person employed at the Beaufort County Veterans' Affairs Office on the day in question. Therefore, it is entirely plausible that evidence related to Delaney's claims against SCDVA, if any, died with

Ray. Additionally, four related cases filed by different plaintiffs all named SCDVA as a defendant in their initial federal complaints.<sup>4</sup> These plaintiffs had no incentive to add SCDVA in order to prevent removal since they brought their claims in federal court in the first instance. Rather, these plaintiffs apparently also believed there was at least a potentially viable theory of liability against SCDVA.

Quite simply, “no evidence of bad faith has been presented, and this court will not presume such bad faith on the part of Plaintiff’s counsel.” Lever v. Jackson Nat. Life Ins. Co., No. 3:12-cv-03108, 2013 WL 436210, at \*4 (D.S.C. Feb. 5, 2013). Therefore, the court grants Delaney’s motion and remands this case to state court.

### **III. CONCLUSION**

For the foregoing reasons, the court **GRANTS** Delaney’s motion and **REMANDS** this case to state court.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

**DAVID C. NORTON**  
**UNITED STATES DISTRICT JUDGE**

**April 23, 2015**  
**Charleston, South Carolina**

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<sup>4</sup> In three of the cases—Miller v. CasePro, No. 9:13-cv-3395; Roberts v. CasePro, No. 9:13-cv-3394; and Franklin v. CasePro, No. 9:14-cv-289—the plaintiff did not object to SCDVA’s motion for summary judgment, and therefore SCDVA is no longer a defendant. In Armstrong v. CasePro, No. 9:13-cv-2026, the plaintiff contested the motion but the case settled before the court issued an order.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP0703782

Rebecca Delaney

CasePro, Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

CasePro, Inc.'s Motion for Summary Judgment is respectfully denied. The court finds a scintilla of evidence that CasePro had some control over its employees. Additionally, this case will be scheduled for a date certain trial on October 5, 2015.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Schedule case on 10/5/2015 roster as a Date Certain.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

  
Circuit Court Judge ~~Carmen T. Mullen~~

2142  
Judge Code

7/31/15  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 31<sup>st</sup> day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Aug, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas David Hoyle 28 Bridgeside Blvd. Mt. Pleasant, SC 29464

William Christopher Swett 28 Bridgeside Blvd. Mt. Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

Lee Ellis Berlinsky 151 Meeting Street, Ste. 200 Charleston, SC 29401

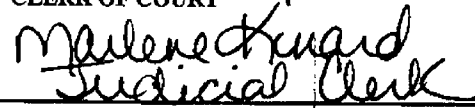
Dennis Gary Lovell, Jr. 40 Calhoun Street, Suite 400 Charleston, SC 29401

Douglas Walker MacKelcan, III 40 Calhoun Street, Suite 400 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

  
Judicial Clerk

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

*(This section contains horizontal lines for additional information.)*

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-03782

Rebecca Delaney, as the PR of the Estate of Justin Nicholas  
Miller

CasePro, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Leigh Ellen Gray

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Reconsideration is hereby denied. This case remains on the trial roster for October 5, 2015.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2142

Judge Code

Date

9/23/15

24 day of Sep, 20 15  
box on this 25 day of S

75 day of Sep, 2015 and a copy of 75 day of Sep, 2015

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AUTO ANSWER ( ) \_\_\_\_\_

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\_\_\_\_\_

ATTORNEY(S) FOR THE DEFENDANT  
*M. M. Nelson*  
CLERK OF COURT

\_\_\_\_\_

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP0703782

Rebecca Delaney

Justin Nicholas Miller

Casepro Inc

2015 OCT 16 PM 4:08

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered *for the defendant. See Attached Verdict*
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

10-16-15  
For Clerk of Court Office Use Only  
10-16-15

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Thomas David Hoyle 28 Bridgeside Blvd. Mt. Pleasant, SC  
29464  
William Christopher Swett 28 Bridgeside Blvd. Mt.  
Pleasant, SC 29464

Dennis Gary Lovell Jr. 40 Calhoun Street Suite 400  
Charleston, SC 29401  
Douglas Walker MacKelcan III 40 Calhoun St., Ste. 400  
Charleston, SC 29401  
Holly Palmer Beeson PO Box 11329 Columbia, SC 29211-  
1329

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

*Maylene Kuyard*  
*Judicial Clerk*  
Jerri Ann Roseaneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
Rebecca Delaney, as the Personal )  
Representative of the Estate of Justin )  
Nicholas Miller, )  
Plaintiff, )  
vs. )  
CasePro, Inc. )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case Number: 2012-CP-07-03782

**VERDICT FORM**

2015 OCT 16 PM 4:08

**We, the Jury, unanimously find for the Plaintiff in the amount of**  
\_\_\_\_\_ **dollars actual damages.**

**We, the Jury, unanimously find for the Defendant.**

Dan Lawrence  
PRESIDING JUROR

# 213

October 16<sup>th</sup>, 2015  
Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

REBECCA DELANEY, as the Personal  
Representative of the Estate of Justin Nicholas  
Miller

Plaintiff(s)

vs.

CASEPRO, INC. AND BEAUFORT COUNTY

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 07-

(Please Print)

Submitted By: T. David Hoyle, Esquire

Address: Motley Rice LLC

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

SC Bar #:

074055

Telephone #:

843-216-9000

Fax #:

843-216-9655

Other:

E-mail:

dhoyle@motleyrice.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

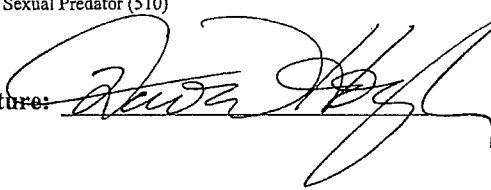
**DOCKETING INFORMATION (Check all that apply)**

*\*If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION (Check One Box Below)**

- |                                                   |                                                     |                                                          |                                                        |
|---------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------|
| <b>Contracts</b>                                  | <b>Torts - Professional Malpractice</b>             | <b>Torts - Personal Injury</b>                           | <b>Real Property</b>                                   |
| <input type="checkbox"/> Constructions (100)      | <input type="checkbox"/> Dental Malpractice (200)   | <input type="checkbox"/> Assault/Slander/Libel (300)     | <input type="checkbox"/> Claim & Delivery (400)        |
| <input type="checkbox"/> Debt Collection (110)    | <input type="checkbox"/> Legal Malpractice (210)    | <input type="checkbox"/> Conversion (310)                | <input type="checkbox"/> Condemnation (410)            |
| <input type="checkbox"/> Employment (120)         | <input type="checkbox"/> Medical Malpractice (220)  | <input type="checkbox"/> Motor Vehicle Accident (320)    | <input type="checkbox"/> Foreclosure (420)             |
| <input type="checkbox"/> General (130)            | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Premises Liability (330)        | <input type="checkbox"/> Mechanic's Lien (430)         |
| <input type="checkbox"/> Breach of Contract (140) | <input type="checkbox"/> Other (299)                | <input type="checkbox"/> Products Liability (340)        | <input type="checkbox"/> Partition (440)               |
| <input type="checkbox"/> Other (199)              |                                                     | <input type="checkbox"/> Personal Injury (350)           | <input type="checkbox"/> Possession (450)              |
|                                                   |                                                     | <input checked="" type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
|                                                   |                                                     | <input type="checkbox"/> Other (399)                     | <input type="checkbox"/> Other (499)                   |
- 
- |                                              |                                                      |                                                           |                                                          |
|----------------------------------------------|------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------|
| <b>Inmate Petitions</b>                      | <b>Judgments/Settlements</b>                         | <b>Administrative Law/Relief</b>                          | <b>Appeals</b>                                           |
| <input type="checkbox"/> PCR (500)           | <input type="checkbox"/> Death Settlement (700)      | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900)               |
| <input type="checkbox"/> Mandamus (520)      | <input type="checkbox"/> Foreign Judgment (710)      | <input type="checkbox"/> Judicial Review (810)            | <input type="checkbox"/> Magistrate-Civil (910)          |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Relief (820)                     | <input type="checkbox"/> Magistrate-Criminal (920)       |
| <input type="checkbox"/> Other (599)         | <input type="checkbox"/> Minor Settlement (730)      | <input type="checkbox"/> Permanent Injunction (830)       | <input type="checkbox"/> Municipal (930)                 |
|                                              | <input type="checkbox"/> Transcript Judgment (740)   | <input type="checkbox"/> Forfeiture-Petition (840)        | <input type="checkbox"/> Probate Court (940)             |
|                                              | <input type="checkbox"/> Lis Pendens (750)           | <input type="checkbox"/> Forfeiture-Consent Order (850)   | <input type="checkbox"/> SCDOT (950)                     |
|                                              | <input type="checkbox"/> Other (799)                 | <input type="checkbox"/> Other (899)                      | <input type="checkbox"/> Worker's Comp (960)             |
|                                              |                                                      |                                                           | <input type="checkbox"/> Zoning Board (970)              |
|                                              |                                                      |                                                           | <input type="checkbox"/> Administrative Law Judge (980)  |
|                                              |                                                      |                                                           | <input type="checkbox"/> Public Service Commission (990) |
|                                              |                                                      |                                                           | <input type="checkbox"/> Employment Security Comm (991)  |
|                                              |                                                      |                                                           | <input type="checkbox"/> Other (999)                     |
- 
- |                                                |                                                         |
|------------------------------------------------|---------------------------------------------------------|
| <b>Special/Complex /Other</b>                  |                                                         |
| <input type="checkbox"/> Environmental (600)   | <input type="checkbox"/> Pharmaceuticals (630)          |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640)   |
| <input type="checkbox"/> Medical (620)         | <input type="checkbox"/> Out-of State Depositions (650) |
| <input type="checkbox"/> Other (699)           | <input type="checkbox"/> Sexual Predator (510)          |

Submitting Party Signature: 

Date: October 31, 2012

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,  
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:**    **You must comply with the Supreme Court Rules regarding ADR.**  
                         **Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

REBECCA DELANEY, as the Personal  
Representative of the Estate of JUSTIN  
NICHOLAS MILLER,

Plaintiff,

vs.

CASEPRO, INC. and BEAUFORT COUNTY

Defendants.

THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 12-CP-07-\_\_\_\_\_

SUMMONS

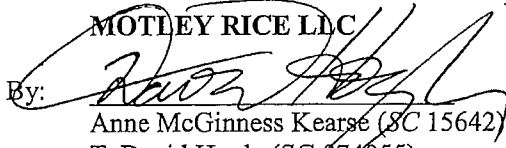
2012 NOV -1 PM 1:35  
COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
S.C.

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs or their attorney, Anne McGinness Kears, with the Motley Rice Law Firm, LLC, 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464 within thirty (30) days from the date of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully submitted this 31 day of October, 2012,

MOTLEY RICE LLC

By: 

Anne McGinness Kears (SC 15642)

T. David Hoyle (SC 074055)

W. Christopher Swett (SC 078661)

28 Bridgeside Boulevard

Mount Pleasant, South Carolina 29464

(843) 216-9000 (Phone)

(843) 216-9450 (Facsimile)

Crystal Lynn Castleberry (SC 078661 )  
CASTLEBERRY LAW OFFICES  
3712 Swallowtail Dr.  
Morgantown, WV 26508  
(304) 594-2828 (Phone)  
(304) 594-2899 (Facsimile)

ATTORNEYS FOR PLAINTIFFS



THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 12-CP-07-\_\_\_\_\_

WRONGFUL DEATH  
AND SURVIVAL ACTION

**JURY TRIAL DEMANDED**

22

5  
50

2012-10-11 PM 1:35  
EATH  
ACTION  
MANDED

Plaintiff, REBECCA DELANEY, as the Personal Representative of the Estate of JUSTIN NICHOLAS MILLER (hereinafter referred to as "Plaintiff"), by and through undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure, hereby sues CASEPRO, INC. ("CasePro") and BEAUFORT COUNTY, and alleges as follows:

1. This is a wrongful death and survival action brought by the mother and personal representative of Justin Nicholas Miller who lost his life after being run over by a fire truck stolen by Calvin Hunt who walked out the front gate of the Beaufort Naval Hospital despite the knowledge of an employee of CasePro, Inc and the Beaufort County Veterans Affairs Officer that Mr. Hunt intended to hurt others. These events form the basis of Plaintiff's negligence; negligent undertaking of duty; and wrongful death. Plaintiff seeks actual and consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future.

### **THE PARTIES, JURISDICTION, AND VENUE**

2. At all relevant times, Plaintiff was and is a resident of Parkersburg, West Virginia.

3. Defendant CasePro is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas. CasePro is authorized to transact business in South Carolina, and this action arises out of a tort committed in South Carolina; therefore, CasePro is subject to the jurisdiction of this Court. CasePro can be served via its registered agent for service of process: C T Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. Defendant Beaufort County is a political subdivision organized and existing under the laws of the State of South Carolina, as defined in the South Carolina Tort Claims Act. The Beaufort County Office of Veterans Affairs maintains its principal place of business at Government Center South, 539 William Hilton Parkway, Hilton Head Island, SC 29928. As a political subdivision of the State, Beaufort County is subject to the jurisdiction of this Court.

5. This Honorable Court has jurisdiction of the claims and parties under South Carolina Code §§ 36-2-802 & 803, and 15-5-150. Venue is appropriate in Beaufort County, South Carolina, pursuant to §§ 15-7-30 and 15-78-100(b) because the most substantial part of the acts giving rise to this action occurred in Beaufort County.

### **FACTS COMMON TO ALL COUNTS**

6. Calvin Hunt is a former United States Marine Corps corporal who was found guilty of assault, communicating a threat, resisting arrest, and other charges during an April 2011 court-martial. Mr. Hunt was subsequently discharged from the Marine Corps.

7. Upon information and belief, Mr. Hunt suffers from Post Traumatic Stress Disorder as a result of his military service.

8. On or about February 24, 2012, Beaufort County employee and Veterans Affairs Officer Edward Ray received a telephone call from Calvin Hunt's grandmother, Claretha Hunt, regarding Calvin Hunt's erratic behavior.

9. As a result, Edward Ray met Calvin Hunt at 1030 hours.

10. Upon information and belief, Calvin Hunt disclosed to Edward Ray that he wanted to hurt himself and others.

11. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had knowledge that Calvin Hunt posed a specific threat of harm to others.

12. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had a special relationship with Calvin Hunt.

13. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County had the ability to monitor, supervise, and control Calvin Hunt's conduct.

14. Beginning at 1030 hours, Edward Ray and his employer Defendant Beaufort County voluntarily undertook a duty to monitor, supervise, and control Calvin Hunt's conduct.

15. As a result, Edward Ray arranged for Calvin Hunt to be seen at Naval Hospital Beaufort (NHB) at 1330 hours.

16. At 1330 hours, Edward Ray escorted Calvin Hunt through the front gate of NHB and took Hunt to Manage Care Intake.

17. Defendant CasePro provided personnel to staff Manage Care Intake at NHB pursuant to contracts with the Naval Medical Logistics Command.

18. Upon information and belief, Calvin Hunt was interviewed by agents and/or employees of Defendant CasePro while in the presence of Edward Ray.

19. During this interview, Calvin Hunt was asked, in the presence of Edward Ray, if he wanted to hurt himself and others.

20. During this interview, Calvin Hunt stated, in the presence of Edward Ray, that he did want to hurt himself or others.

21. As a result, personnel employed by Defendant CasePro were aware that Calvin Hunt presented a serious danger of violence to others.

22. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had knowledge that Calvin Hunt posed a specific threat of harm to others.

23. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had a special relationship with Calvin Hunt.

24. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had the ability to monitor, supervise, and control Calvin Hunt's conduct.

25. Personnel employed by Defendant CasePro undertook a duty to ensure that Calvin Hunt was admitted to NHB and kept under close watch.

26. Personnel employed by Defendant CasePro undertook a duty to take Calvin Hunt to the Emergency Room of NHB for medical treatment.

27. Personnel employed by Defendant CasePro did not, however, notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Calvin Hunt did not hurt others.

28. Similarly, Edward Ray, upon learning a second time that Calvin Hunt intended to hurt himself or others, did not notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Calvin Hunt did not hurt others.

29. Instead, personnel employed by Defendant CasePro and Edward Ray escorted Mr. Hunt to the Emergency Department at NHB.

30. Inexplicably, at this point, personnel employed by Defendant CasePro and Edward Ray allowed Mr. Hunt to leave from the facility.

31. Specifically, Calvin Hunt asked to get a quick breath of fresh air and with the consent, acquiescence, and/or permission of personnel employed by Defendant CasePro as well as Edward Ray exited the facility.

32. After exiting the facility, Calvin Hunt removed all of his clothing and left the NHB property on foot.

33. At about the same time, the Town of Port Royal Fire Department was responding to a non-fire emergency call at the Laurel Hill Apartment Complex located near the NHB.

34. A naked Calvin Hunt jumped into the unoccupied fire truck and entered the highway from the apartment complex parking lot.

35. Subsequently, Calvin Hunt struck Plaintiff's decedent, JUSTIN NICHOLAS MILLER, with the fire truck as he was crossing the road on foot.

36. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, experienced conscious pain and suffering from this impact and subsequently died from his injuries.

**FIRST CAUSE OF ACTION**  
**(Negligence/ Survival Action: S.C. Code Ann. § 15-5-90)**  
**As to Defendant CasePro**

37. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

38. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

39. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

40. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

41. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;

- (ii) had a special relationship with Calvin Hunt;

- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;

- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

42. As such, Defendant's duties-undertaken voluntarily and/or pursuant to contract-included, but were not limited to:

- (i) Assisting with screening potential patients at Managed Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;

- (iii) Screening potential patients to determine whether treatment should be provided;

- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

43. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

44. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the

situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;

(vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;

(vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;

(viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;

(ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and

(x) Such other and further particulars as the evidence may show.

45. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

46. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the trier of fact.



**SECOND CAUSE OF ACTION**  
**(Wrongful Death: S.C. Code Ann. § 15-51-10)**  
**As to Defendant CasePro**

47. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

48. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

49. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

50. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

51. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

(i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;

(ii) had a special relationship with Calvin Hunt;

(iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;

(iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

52. As such, Defendant's duties-undertaken voluntarily and/or pursuant to contract-included, but were not limited to:

(i) Assisting with screening potential patients at Manage Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;
- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

53. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

54. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;
- (vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;
- (vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;
- (viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;
- (ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and
- (x) Such other and further particulars as the evidence may show.

55. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

56. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the Trier of fact.

**THIRD CAUSE OF ACTION**  
**(Punitive and Exemplary Damages)**  
**As to Defendant CasePro**

57. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

58. The actions and inactions of Defendant were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to the Plaintiff and injuries and death to the Plaintiff's decedent.

59. More specifically, Defendant acted with a conscious and flagrant disregard for the rights and safety of Plaintiff's decedent and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of JUSTIN NICHOLAS MILLER, by failing to anticipate the reasonably foreseeable risks that Calvin Hunt posed to him and others similarly situated, and failing to exercise even the slightest degree of care to prevent Mr. Hunt from eloping and injuring Plaintiff's decedent and others similarly situated.

60. Accordingly, Defendant is liable for punitive and exemplary damages awardable to Plaintiff.

61. WHEREFORE, Plaintiff demands judgment against Defendant CasePro for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as the Court or jury may deem just and proper.

**FOURTH CAUSE OF ACTION**

**(Negligence: S.C. Code Ann. § 15-78-40/ Survival Action: S.C. Code Ann. § 15-5-90)**

**As to Defendant Beaufort County**

62. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

63. This action is brought pursuant to the South Carolina Tort Claims Act.

64. At all times relevant, Beaufort County was and is a political subdivision of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of Beaufort County.

65. At all times relevant, Edward Ray was and is the Veterans Affairs Officer and an employee of Beaufort County.

66. Beaufort County is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

67. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

68. Moreover, Beaufort County employee Edward Ray undertook a duty to monitor, supervise and/or control Calvin Hunt and ensure that he obtained medical care so as to prevent Calvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

69. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest degree of care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

70. Defendant Beaufort County's acts and/or omissions are independent and separate acts of negligence.

71. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

72. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

**FIFTH CAUSE OF ACTION**  
**(Wrongful Death: S.C. Code Ann. § 15-78-170)**  
**As to Defendant Beaufort County**

73. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

74. This action is brought pursuant to the South Carolina Tort Claims Act.

75. At all times relevant, Beaufort County was and is a political subdivision of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of Beaufort County.

76. At all times relevant Edward Ray was and is the Veterans Affairs Officer and an employee of Beaufort County.

77. Beaufort County is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

78. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

79. Moreover, Beaufort County employee Edward Ray undertook a duty to monitor, supervise, and/or control Calvin Hunt so as to prevent Calvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

80. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and

(v) Such other and further particulars as the evidence may show.

81. Defendant Beaufort County's acts and/or omissions are independent and separate acts of negligence.

82. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

83. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

**SIXTH CAUSE OF ACTION**  
**(Negligent Undertaking of Duty)**  
**As to All Defendants**

84. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

85. Defendants CasePro and Beaufort County voluntarily undertook a duty to keep Calvin Hunt under supervision upon learning that he intended to hurt himself or others.

86. This duty was undertaken for the benefit of those whom it was reasonably foreseeable that Calvin Hunt would come into contact with and could subject to harm on February 25, 2012 including, but not limited to, Plaintiff's decedent JUSTIN NICHOLAS MILLER.



87. Defendants CasePro and Beaufort County took actions they should have recognized as necessary for the protection of *inter alia* Plaintiff's decedent, JUSTIN NICHOLAS MILLER, and failed to exercise reasonable care in performing this undertaking by:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

88. The breach of this Duty by Defendants CasePro and Beaufort County increased the risk of harm to Plaintiff's decedent, JUSTIN NICHOLAS MILLER; were of duties owed to Plaintiff's decedent, JUSTIN NICHOLAS MILLER, as an intended third party; and the harm Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered was proximately caused by the breach of these voluntarily undertaken duties.

89. The breach of this Duty by Defendants CasePro and Beaufort County was a proximate cause of the injury sustained by Plaintiff's decedent JUSTIN NICHOLAS MILLER.

90. As a direct and proximate result of this breach of Duty, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendants' wrongful acts, including pecuniary loss, mental shock

and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

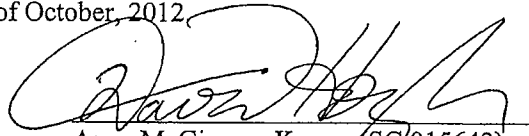
91. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendants.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays as follows:

1. For a trial by jury and judgment against the Defendants CasePro and Beaufort County for actual and other compensatory damages as a jury may determine.
2. For exemplary and punitive damages against Defendant CasePro as a jury may determine to halt such conduct.
3. For the costs of this suit.
4. For such other and further relief to which she may be entitled and as this Honorable Court may deem just and proper.

Respectfully submitted this 31 day of October, 2012.



Anne McGinness Kearse (SC 015642)  
T. David Hoyle (SC 074035)  
W. Christopher Swett (SC 078251)  
**MOTLEY RICE LLC**  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29464  
(843) 216-9000 | (843) 216-9440 (Facsimile)

Crystal Lynn Castleberry (SC 078661 )  
**CASTLEBERRY LAW OFFICES**  
3712 Swallowtail Dr.  
Morgantown, WV 26508  
(304) 594-2828 | (304) 594-2899 (Facsimile)

Attorneys for Plaintiff

# Beaufort County Common Pleas

Clerk : Jerri Ann Roseneau  
PO Box 1128  
Beaufort, SC 299011128  
(843) 255-5050

Received From: Hoyle, Thomas David  
28 Bridgeside Blvd.  
Mt. Pleasant, SC 29464

Date: 11/ 1/2012  
Receipt #: 83335  
Clerk: c07tpatter

Paying for: Delaney, Rebecca

Transaction Type: Payment

Reference #: 079544

Payment Type: Check \$150.00

Comment:

Non-Refundable

Total Paid: \$150.00

Total Received: \$150.00

Change Due: \$0.00

| Case #        | Caption                        | Previous Balance | Amount Paid | Balance Due |
|---------------|--------------------------------|------------------|-------------|-------------|
| 2012CP0703782 | Rebecca Delaney VS Casepro Inc | \$150.00         | \$150.00    | \$0.00      |



|                |          |          |        |
|----------------|----------|----------|--------|
| Total Cases: 1 | \$150.00 | \$150.00 | \$0.00 |
|----------------|----------|----------|--------|

LAW OFFICES

**CARLOCK, COPELAND & STAIR, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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DIRECT DIAL NUMBER

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FACSIMILE

843.727.2995

January 7, 2013



Jerri Ann Roseneau, Clerk  
Circuit Court of Beaufort County  
Post Office Box 1128  
Beaufort, SC 29901-1128

Re: Rebecca Delaney, as Personal Representative of the Estate of Justin Nicholas  
Miller v. CasePro, Inc. and Beaufort County  
C/A No.: 2012-CP-07-03782  
CCS File No.: 549-46690

Dear Ms. Roseneau:

Enclosed please find the Summons, Answer and Third-Party Complaint of Defendant CasePro, Inc., as well as CasePro, Inc.'s Motion to Dismiss regarding the above-referenced matter. I have also enclosed the corresponding motion cover sheet and \$25 filing fee. Please file the originals and return the file-stamped copies to our office in the enclosed self-addressed, stamped envelopes.

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Douglas W. Mackelcan".

DOUGLAS W. MACKELCAN

DWM:amc

Enclosures

cc: T. David Hoyle, Esq.  
Marshall H. Waldron, Jr., Esq.

0061

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) THE FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-07-03782

REBECCA DELANEY, AS THE  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JUSTIN NICHOLAS  
MILLER,

Plaintiff,

vs.

CASEPRO, INC. AND BEAUFORT  
COUNTY

Defendants.

---

CASEPRO, INC.

Third-Party Plaintiff,

vs.

THE UNITED STATES OF AMERICA

Third-Party Defendant.

---

**SUMMONS**

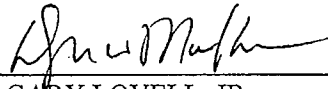
TO THE THIRD-PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Third-Party Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

This 7th day of January, 2013.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:   
D. GARY LOVELL, JR.  
State Bar No.: 69293  
DOUGLAS W. MACKELCAN  
State Bar No.: 76332

Attorneys for Defendant/Third-Party Plaintiff  
CasePro, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
843-727-0307



|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS      |
|                               | ) | THE FOURTEENTH JUDICIAL CIRCUIT   |
| COUNTY OF BEAUFORT            | ) | CASE NO.: 2012-CP-07-03782        |
|                               | ) |                                   |
| REBECCA DELANEY, AS THE       | ) |                                   |
| PERSONAL REPRESENTATIVE OF    | ) |                                   |
| THE ESTATE OF JUSTIN NICHOLAS | ) |                                   |
| MILLER,                       | ) | <b>ANSWER AND THIRD-PARTY</b>     |
|                               | ) | <b>COMPLAINT OF CASEPRO, INC.</b> |
|                               | ) |                                   |
| Plaintiff,                    | ) |                                   |
|                               | ) |                                   |
| vs.                           | ) |                                   |
|                               | ) |                                   |
| CASEPRO, INC. AND BEAUFORT    | ) |                                   |
| COUNTY                        | ) |                                   |
|                               | ) |                                   |
| Defendants.                   | ) |                                   |
|                               | ) |                                   |
| CASEPRO, INC.                 | ) |                                   |
|                               | ) |                                   |
| Third-Party Plaintiff,        | ) |                                   |
|                               | ) |                                   |
| vs.                           | ) |                                   |
|                               | ) |                                   |
| THE UNITED STATES OF AMERICA  | ) |                                   |
|                               | ) |                                   |
| Third-Party Defendant.        | ) |                                   |
|                               | ) |                                   |

COMES NOW CasePro, Inc, ("Defendant CasePro") Defendant in the above-styled civil action and presents this its Answer to the Complaint and Third-Party Complaint against The United States of America and shows the Court as follows:

**FIRST DEFENSE**

At all times relevant to the matters complained of in the Complaint, Defendant CasePro exercised that degree of skill and care required of it by law and did not act in a negligent, reckless, bad faith, malicious, or grossly negligent manner.



### **SECOND DEFENSE**

The Complaint fails to state facts sufficient to constitute a cause of action against Defendant CasePro and the Complaint against it should be dismissed pursuant to the provisions of SCRCP 12(b)(6).

### **THIRD DEFENSE**

The Plaintiff's damages, if any, were caused by and were the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the Plaintiff, and recovery should be barred or reduced in proportion to the Plaintiff's negligence as provided by law.

### **FOURTH DEFENSE**

That the Plaintiff has failed to comply with the mandatory provisions of South Carolina Code Section 15-79-10 relating to actions for medical malpractice, and therefore, the Complaint should be dismissed with prejudice. Furthermore, to the extent the Complaint states claims for non-economic damages arising from the rendition of professional medical services by agents or employees of this Defendant, then those claims are limited in amount under the applicable law.

### **FIFTH DEFENSE**

Some or all of Plaintiff's claims may fail for failure to join a necessary party under SCRCP Rule 12(b)(7) and/or SCRCP Rule 19.

### **SIXTH DEFENSE**

The claims for punitive damages, and the statutes of the State of South Carolina purporting to authorize those claims, violate this Defendant's rights as guaranteed under the Constitutions of the State of South Carolina and the United States of America. Furthermore, to

the extent that the Defendants, or its agents or employees, are deemed to be employees of a governmental entity, then those claims for punitive damages fail as a matter of law.

#### **SEVENTH DEFENSE**

The injuries and damages sustained by the Plaintiff, if any, were due to, caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of persons or entities other than Defendant or its agents and employees.

#### **EIGHTH DEFENSE**

Defendant CasePro had no right to, and did not exercise, control over the acts and/or omissions of the people alleged in the Complaint to have acted on its behalf; therefore, Defendant CasePro cannot be held liable to the Plaintiff.

#### **NINTH DEFENSE**

In the event that the personnel at question in this suit are found not to be agents or employees of this Defendant at the time of the alleged tort, or are found not to have been acting within the course and scope of any agency with this Defendant, then this Court lacks jurisdiction over this Defendant. This Defendant makes this special appearance, contesting jurisdiction under said circumstances and specifically reserving all defenses as to personal jurisdiction.

#### **TENTH DEFENSE**

Defendant CasePro reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

### ELEVENTH DEFENSE

Defendant CasePro responds to the numbered Paragraphs and allegations of the Complaint and shows the Court as follows:

1. Defendant denies the allegations of Paragraph 1.
2. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 2. Therefore, those allegations can neither be admitted nor denied at this time.
3. In response to Paragraph 3, Defendant CasePro admits only that it is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas, that it is authorized to transact business in South Carolina, and that it can be served via its registered agent for service of process: CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223. Defendant CasePro denies the remaining allegations of Paragraph 3 of the Complaint.
4. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 4. Therefore, those allegations can neither be admitted nor denied at this time.
5. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 5. Therefore, those allegations can neither be admitted nor denied at this time.

6. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 6. Therefore, those allegations can neither be admitted nor denied at this time.

7. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 7. Therefore, those allegations can neither be admitted nor denied at this time.

8. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 8. Therefore, those allegations can neither be admitted nor denied at this time.

9. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 9. Therefore, those allegations can neither be admitted nor denied at this time.

10. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 10. Therefore, those allegations can neither be admitted nor denied at this time.

11. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 11. Therefore, those allegations can neither be admitted nor denied at this time.

12. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 12. Therefore, those allegations can neither be admitted nor denied at this time.

13. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 13. Therefore, those allegations can neither be admitted nor denied at this time.

14. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 14. Therefore, those allegations can neither be admitted nor denied at this time.

15. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 15. Therefore, those allegations can neither be admitted nor denied at this time.

16. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 16. Therefore, those allegations can neither be admitted nor denied at this time.

17. In response to Paragraph 17, Defendant CasePro admits that it provided a placement service for healthcare workers ("HCW") to Naval Hospital Beaufort ("NHB") pursuant to a contract with the Naval Medical Logistics Command, a division of the United States government. Defendant CasePro denies any remaining allegations contained in Paragraph 17.

18. Defendant CasePro denies the allegations contained in Paragraph 18 as stated. CasePro shows that it had no right or authority to control the actions or activities of the HCW in question all alleged, and thus those HCW were not acting within any employment or agency relationship with CasePro at the times and in the circumstances as alleged in the Complaint.

19. Defendants deny the allegations of Paragraph 19, as stated.
20. Defendant CasePro denies the allegations contained in Paragraph 20.
21. Defendant CasePro denies the allegations contained in Paragraph 21.
22. Defendant CasePro denies the allegations contained in Paragraph 22.
23. Defendant CasePro denies the allegations contained in Paragraph 23.
24. Defendant CasePro denies the allegations contained in Paragraph 24.
25. Defendant CasePro denies the allegations contained in Paragraph 25.
26. Defendant CasePro denies the allegations contained in Paragraph 26.
27. Defendant CasePro denies the allegations contained in Paragraph 27.
28. Defendant CasePro denies the allegations contained in Paragraph 28.
29. Defendant CasePro denies the allegations contained in Paragraph.
30. Defendant CasePro denies the allegations of Paragraph 30.
31. Defendant CasePro denies the allegations of Paragraph 31.

32. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 32. Therefore, those allegations can neither be admitted nor denied at this time.

33. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 33. Therefore, those allegations can neither be admitted nor denied at this time.

34. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 34. Therefore, those allegations can neither be admitted nor denied at this time.

35. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 35. Therefore, those allegations can neither be admitted nor denied at this time.

36. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 36. Therefore, those allegations can neither be admitted nor denied at this time.

37. In response to Paragraph 37, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 36.

38. In response to the allegations of Paragraphs 38 and 39, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 38 and 39.

39. Defendant CasePro denies the allegations contained in Paragraph 40 and shows This complaint does allege a claim under the cited code section and does allege facts involving failure of persons to exercise professional medical judgment and skill.

40. Defendant CasePro denies the allegations contained in Paragraph 41, including all subparts.

41. Defendant CasePro denies the allegations contained in Paragraph 42, including all subparts

42. Defendant CasePro denies the allegations contained in Paragraph 43.

43. Defendant CasePro denies the allegations contained in Paragraph 44, including all subparts.

44. Defendant CasePro denies the allegations contained in Paragraph 45.

45. Defendant CasePro denies the allegations contained in Paragraph 46.

46. In response to Paragraph 47 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 46.

47. In response to the allegations of Paragraphs 48 and 49, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 48 and 49.

48. Defendant CasePro denies the allegations contained in Paragraph 50 and shows that this Complaint does allege a claim under the cited code section and does allege facts involving failure of persons to exercise professional medical judgment and skill.

49. Defendant CasePro denies the allegations contained in Paragraph 51, including all subparts.



50. Defendant CasePro denies the allegations contained in Paragraph 52, including all subparts.

51. Defendant CasePro denies the allegations contained in Paragraph 53.

52. Defendant CasePro denies the allegations contained in Paragraph 54, including all subparts.

53. Defendant CasePro denies the allegations contained in Paragraph 55.

54. Defendant CasePro denies the allegations contained in Paragraph 56.

55. In response to Paragraph 57 of the Complaint, Defendant incorporates as if fully set forth herein its responses to Paragraphs 1 through 56.

56. Defendant CasePro denies the allegations contained in Paragraph 58.

57. Defendant CasePro denies the allegations contained in Paragraph 59.

58. Defendant CasePro denies the allegations contained in Paragraph 60.

59. Defendant CasePro denies the allegations contained in Paragraph 61.

60. In response to Paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83 of the Complaint, Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of these Paragraphs of the Complaint as they are directed to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

61. In response to Paragraph 84 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 83 herein.

62. Defendant CasePro denies the allegations contained in Paragraph 85 as they relate to it, and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 85 of the Complaint as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

63. Defendant CasePro denies the allegations contained in Paragraph 86 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 86 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

64. Defendant CasePro denies the allegations contained in Paragraph 87 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 87 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

65. Defendant CasePro denies the allegations contained in Paragraph 88 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 88 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

66. Defendant CasePro denies the allegations contained in Paragraph 89 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of

Paragraph 89 as they relate to Defendant Beaufort County. Therefore, those allegations can neither be admitted nor denied at this time.

67. Defendant CasePro denies the allegations contained in Paragraph 90.

68. Defendant CasePro denies the allegations contained in Paragraph 91.

### **THIRD PARTY COMPLAINT**

#### **First Cause of Action (Equitable and Contractual Indemnification)**

69. The Third-Party Defendant, the United States of America, is a proper party in this case as a result of its operation of the Naval Hospital Beaufort. Defendant/Third-Party Plaintiff CasePro, Inc. contracted with the Department of the Navy, an agency of the United States of America, to provide placement services for certain personnel needs of the Navy including for various healthcare facilities in North Carolina and South Carolina, one of which was the Naval Hospital Beaufort.

70. Third-Party Plaintiff CasePro, Inc.'s contract with the United States of America was issued by the Naval Medical Logistics Command, 1681 Nelson Street, Fort Detrick, Maryland 21702-9203 and is identified as Contract Number N62645-07-D-5005 ("the Contract").

71. The Contract states that the personnel providing services under the Contract are subject to day-to-day supervision and control by and of Government personnel.

72. The personnel in question were not subject to day-to-day supervision and/or control by CasePro.

73. The Contract between CasePro and The United States of America has created a special relationship between the parties because it governs the way in which the personnel are given instruction, guidance, direction, and approval with regards to the tasks they are assigned and perform at the naval healthcare facilities.

74. In the Complaint, Plaintiff alleges that certain acts and omissions of personnel provided by CasePro caused the death of Justin Nicholas Miller.

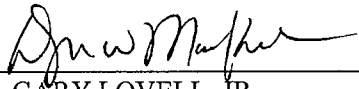
75. On or about February 24, 2012, the day of the incidents described in the Complaint, the personnel placed by CasePro were acting entirely and solely within the course and scope of tasks assigned by and under the exclusive control and supervision of the United States of America, pursuant to the Contract.

76. Because the United States of America was guiding, directing instructing, and in exclusive control of, the personnel in question placed by CasePro, to the extent that CasePro is found to be liable for the acts and omissions of those personnel as alleged in the Complaint, then the United States of America must fully indemnify CasePro for any such liability, including any attorney's fees, costs and expenses incurred for having to defend this lawsuit.

WHEREFORE, having fully responded to the Complaint and asserted the Third-Party Complaint herein, Defendant/Third-Party Plaintiff prays that a Summons be issued to the United States of America, for a judgment dismissing Plaintiff's claims against it and, in the alternative, a judgment against Third-Party Defendant United States of America for any amount CasePro is found liable to the Plaintiff, including any costs, fees, interest, attorney's fees, expenses and other costs, and for any other relief the Court deems just and proper. Defendant/Third-Party Plaintiff further demands a trial by jury of twelve persons.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:   
D. GARY LOVELL, JR.  
State Bar No.: 69293  
DOUGLAS W. MACKELCAN  
State Bar No.: 76332

Attorneys for Defendant CasePro, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
843-727-0307

REBECCA DELANEY, AS THE  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JUSTIN NICHOLAS  
MILLER,

Plaintiff,

VS.

CASEPRO, INC. AND BEAUFORT  
COUNTY

Defendants.

CASEPRO, INC.

Third-Party Plaintiff,

VS.

THE UNITED STATES OF AMERICA

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-07-03782

**ANSWER AND THIRD-PARTY  
COMPLAINT OF CASEPRO, INC.**

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Anne McGinness Kears, Esq.  
T. David Hoyle, Esq.  
W. Christopher Swett, Esq.  
Motley Rice, LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464

Marshall H. Waldron, Jr., Esq.  
Griffith, Sadler & Sharp, P.A.  
Post Office Drawer 570  
Beaufort, SC 29901

This 7<sup>th</sup> day of January, 2013.

Donald H. Crowder  
Assistant to D. Gary Lovell, Jr.

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE ☒ COURT OF COMMON PLEAS  
☐ FAMILY COURT

REBECCA DELANEY, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF JUSTIN NICHOLAS MILLER )

☐ Plaintiff, )

v. )

CASEPRO, INC. AND BEAUFORT  
COUNTY )

☒ Defendant )

CASEPRO, INC. )

☒ Defendant/Third-Party Plaintiff )

v. )

THE UNITED STATES OF AMERICA )

☐ Third Party Defendant )

check box above indicating submitting party )

CASE NO. 2012-CP-07-03782

**MOTION INFORMATION FORM  
AND COVER SHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                                                                                                                                     |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <u>Name, S.C. Bar No. and Address of Plaintiff's Attorney</u><br>T. David Hoyle, Esq.<br>Motley Rice LLC<br>28 Bridgeside Blvd<br>Mount Pleasant, SC 29464<br>T: (843) 216-9000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | <u>Name, S.C. Bar No. and Address of Defendant's Attorney</u><br>D. Gary Lovell, Jr. (69293)<br>Douglas W. MacKelcan (76332)<br>Carlock, Copeland & Stair, LLP<br>40 Calhoun Street, Suite 400<br>Charleston, SC 29401<br>Telephone: 843-727-0307 Fax: 843-727-2995 |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                     |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                                                                                                                                                     |  |
| Nature of Motion: Motion to Dismiss                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Court Reporter Needed: Yes                                                                                                                                                                                                                                          |  |
| Estimated Time Needed : 30 minutes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                                     |  |
| <b>SECTION II: Motion Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                                     |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion --<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                     |  |
| Signature of Attorney for Defendant/Third-Party Plaintiff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | Date submitted <u>January 7, 2013</u>                                                                                                                                                                                                                               |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                                     |  |
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$25.00</b><br><input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                                                                                                                                     |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                     |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | JUDGE<br>CODE: _____ Date: _____                                                                                                                                                                                                                                    |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                     |  |
| <b>DATE FILED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                                                                                                     |  |
| Collected by: _____<br>(print name)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                     |  |
| <input type="checkbox"/> <b>MOTION FEE COLLECTED:</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                     |  |
| <input type="checkbox"/> <b>CONTESTED - AMOUNT DUE:</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                                                                                                                                                                                                     |  |

|                               |   |                                         |
|-------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS            |
|                               | ) | THE FOURTEENTH JUDICIAL CIRCUIT         |
| COUNTY OF BEAUFORT            | ) | CASE NO.: 2012-CP-07-03782              |
|                               | ) |                                         |
| REBECCA DELANEY, AS THE       | ) |                                         |
| PERSONAL REPRESENTATIVE OF    | ) |                                         |
| THE ESTATE OF JUSTIN NICHOLAS | ) | <b>DEFENDANT CASEPRO, INC.'S MOTION</b> |
| MILLER,                       | ) | <b>TO DISMISS</b>                       |
|                               | ) |                                         |
| Plaintiff,                    | ) |                                         |
|                               | ) |                                         |
| vs.                           | ) |                                         |
|                               | ) |                                         |
| CASEPRO, INC. AND BEAUFORT    | ) |                                         |
| COUNTY                        | ) |                                         |
|                               | ) |                                         |
| Defendants.                   | ) |                                         |
|                               | ) |                                         |

COMES NOW Defendant CasePro, Inc., Defendant in the above-styled civil action, and presents this its Motion to Dismiss the Complaint pursuant to South Carolina Rules of Civil Procedure, Rule 12, and shows the Court as follows:

On November 1, 2012, Plaintiff filed with this Court the Summons and Complaint against Defendants CasePro, Inc. and Beaufort County. However, Plaintiff has not filed a Notice of Intent to File Suit against Defendant CasePro, Inc., and the parties have not conducted pre-suit mediation, required under South Carolina Code 15-79-10 for medical malpractice actions. Therefore, Defendant CasePro, Inc. is entitled to a dismissal of the Complaint with prejudice.

Despite Plaintiff's statement in the Complaint that this case is one that does not involve medical malpractice, the facts alleged describe acts and/or omissions arising out of the activities of healthcare providers under South Carolina law, who are acting within the scope of their duties providing healthcare. Specifically, Paragraph 17 alleges, "CasePro provided personnel to staff Manage Care Intake at NHB." Paragraph 18 alleges, "Kalvin Hunt was interviewed by agents and/or employees of Defendant CasePro." Paragraphs 19-22 involve allegations that personnel



employed by CasePro questioned Mr. Hunt if he wanted to hurt himself or others. Paragraph 25 alleges that personnel employed by CasePro were responsible for ensuring "that Calvin Hunt was admitted to NHB and kept under close watch." Similarly, Paragraph 26 alleges, "Personnel employed by CasePro undertook a duty to take Calvin Hunt to the Emergency Room of NHB for medical treatment." Paragraphs 42 and 44 list specific activities requiring personnel employed by CasePro to exercise professional medical judgment. Because the Complaint clearly describes activities of medical personnel in the scope of their duties providing healthcare services, South Carolina Code Section 15-79-125 requires that Plaintiff file a Notice of Intent to File Suit and participate in pre-suit mediation, neither of which was done. As such, the Complaint was filed prematurely and must be dismissed as a matter of law.

In addition to Plaintiff's failure to comply with South Carolina Code Sections 15-79-10 and 15-36-100, Plaintiff cannot recover in this case from Defendant CasePro because CasePro cannot be vicariously liable for the actions of the healthcare workers at the Beaufort Naval Hospital on the day of the incident pursuant to CasePro's contract with the United States government. CasePro did not have the right to control the activities of the healthcare workers, and therefore, it should be dismissed from this case with prejudice.

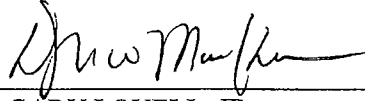
This Motion is supported by the South Carolina Rules of Civil Procedure, applicable case and statutory law, and any memorandum in support of Defendant CasePro's Motion to Dismiss to be submitted to the Court under separate filing prior to a hearing on this Motion.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



D. GARY LOVELL, JR.

State Bar No.: 69293

DOUGLAS W. MACKELCAN

State Bar No.: 76332

Attorneys for Defendant CasePro, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
843-727-0307





consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future.

#### **THE PARTIES, JURISDICTION, AND VENUE**

2. At all relevant times, Plaintiff was and is a resident of Parkersburg, West Virginia.

3. Defendant CasePro is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas. CasePro is authorized to transact business in South Carolina, and this action arises out of a tort committed in South Carolina; therefore, CasePro is subject to the jurisdiction of this Court. CasePro can be served via its registered agent for service of process: C T Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. Defendant SCOVA is an agency organized and existing under the laws of the State of South Carolina, as defined in the South Carolina Tort Claims Act. SCOVA maintains its principal place of business at 1205 Pendleton Street, Suite 463, Columbia, SC 29201. As an agency of the State, SCOVA is subject to the jurisdiction of this Court.

5. This Honorable Court has jurisdiction of the claims and parties under South Carolina Code §§ 36-2-802 & 803, and 15-5-150. Venue is appropriate in Beaufort County, South Carolina, pursuant to §§ 15-7-30 and 15-78-100(b) because the most substantial part of the acts giving rise to this action occurred in Beaufort County.

#### **FACTS COMMON TO ALL COUNTS**

6. Calvin Hunt is a former United States Marine Corps corporal who was found guilty of assault, communicating a threat, resisting arrest, and other charges during an April 2011 court-martial. Mr. Hunt was subsequently discharged from the Marine Corps.

7. Upon information and belief, Mr. Hunt suffers from Post Traumatic Stress Disorder as a result of his military service.

8. On or about February 24, 2012, SCOVA employee and Beaufort County Veterans Affairs Officer Edward Ray received a telephone call from Calvin Hunt's grandmother, Claretha Hunt, regarding Calvin Hunt's erratic behavior.

9. As a result, Edward Ray met Calvin Hunt at 1030 hours.

10. Upon information and belief, Calvin Hunt disclosed to Edward Ray that he wanted to hurt himself and others.

11. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had knowledge that Calvin Hunt posed a specific threat of harm to others.

12. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had a special relationship with Calvin Hunt.

13. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA had the ability to monitor, supervise, and control Calvin Hunt's conduct.

14. Beginning at 1030 hours, Edward Ray and his employer Defendant SCOVA voluntarily undertook a duty within the ordinary scope of their duties to monitor, supervise, and control Calvin Hunt's conduct.

15. As a result, Edward Ray arranged for Calvin Hunt to be seen at Naval Hospital Beaufort (NHB) at 1330 hours.

16. At 1330 hours, Edward Ray escorted Calvin Hunt through the front gate of NHB and took Hunt to Manage Care Intake.

17. Defendant CasePro provided personnel to staff Manage Care Intake at NHB pursuant to contracts with the Naval Medical Logistics Command.

18. Upon information and belief, Kalvin Hunt was interviewed by agents and/or employees of Defendant CasePro while in the presence of Edward Ray.

19. During this interview, Kalvin Hunt was asked, in the presence of Edward Ray, if he wanted to hurt himself and others.

20. During this interview, Kalvin Hunt stated, in the presence of Edward Ray, that he did want to hurt himself or others.

21. As a result, personnel employed by Defendant CasePro were aware that Kalvin Hunt presented a serious danger of violence to others.

22. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had knowledge that Kalvin Hunt posed a specific threat of harm to others.

23. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had a special relationship with Kalvin Hunt.

24. Beginning at approximately 1330 hours, personnel employed by Defendant CasePro had the ability to monitor, supervise, and control Kalvin Hunt's conduct.

25. Personnel employed by Defendant CasePro undertook a duty to ensure that Kalvin Hunt was admitted to NHB and kept under close watch.

26. Personnel employed by Defendant CasePro undertook a duty to take Kalvin Hunt to the Emergency Room of NHB for medical treatment.

27. Personnel employed by Defendant CasePro did not, however, notify law enforcement, the Department of Mental Health, or take any affirmative action reasonably necessary under the circumstances to ensure that Kalvin Hunt did not hurt others.

28. Similarly, Edward Ray, upon learning a second time that Kalvin Hunt intended to hurt himself or others, did not notify law enforcement, the Department of Mental Health, or take

any affirmative action reasonably necessary under the circumstances to ensure that Kalvin Hunt did not hurt others.

29. Instead, personnel employed by Defendant CasePro and Edward Ray began to escort Mr. Hunt to the Emergency Department at NHB.

30. Inexplicably, at this point, personnel employed by Defendant CasePro and Edward Ray allowed Mr. Hunt to leave from the facility.

31. Specifically, Kalvin Hunt asked to get a quick breath of fresh air and with the consent, acquiescence, and/or permission of personnel employed by Defendant CasePro as well as Edward Ray, exited the facility.

32. Kalvin Hunt removed all of his clothing and left the NHB property on foot.

33. At about the same time, the Town of Port Royal Fire Department was responding to a non-fire emergency call at the Laurel Hill Apartment Complex located near the NHB.

34. A naked Kalvin Hunt jumped into the unoccupied fire truck and entered the highway from the apartment complex parking lot.

35. Subsequently, Kalvin Hunt struck Plaintiff's decedent, JUSTIN NICHOLAS MILLER, with the fire truck as he was crossing the road on foot.

36. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, experienced conscious pain and suffering from this impact and subsequently died from his injuries.

**FIRST CAUSE OF ACTION**

**(Negligence/ Survival Action: S.C. Code Ann. § 15-5-90)**

**As to Defendant CasePro**

37. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.



38. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

39. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

40. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence:

41. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;

- (ii) had a special relationship with Calvin Hunt;

- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;

- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

42. As such, Defendant's duties undertaken voluntarily and/or pursuant to contract included, but were not limited to:

- (i) Assisting with screening potential patients at Managed Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;

- (iii) Screening potential patients to determine whether treatment should be provided;

- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

43. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

44. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the

situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;

(vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;

(vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;

(viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;

(ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and

(x) Such other and further particulars as the evidence may show.

45. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

46. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the trier of fact.

**SECOND CAUSE OF ACTION**  
**(Wrongful Death: S.C. Code Ann. § 15-51-10)**  
**As to Defendant CasePro**

47. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

48. Defendant contracted with Naval Medical Logistics Command to supply various personnel and services over an extended period of time, including the date of this incident, to NHB.

49. Defendant had a contractual duty to provide personnel at the Managed Care Intake, the Emergency Department/Room, and the Urgent Care Clinic at NHB.

50. This claim is not brought pursuant to 10 USC § 1089 and does not allege acts of medical negligence.

51. Specifically, this claim is brought for the negligent acts/omissions of this Defendant's employees/agents who:

- (i) had specific knowledge that Calvin Hunt posed a specific threat of harm to others;
- (ii) had a special relationship with Calvin Hunt;
- (iii) had the ability to monitor, supervise, and control Calvin Hunt's conduct;
- (iv) undertook a duty to ensure that Calvin Hunt was delivered to the NHB Emergency Room for medical treatment and kept under close watch.

52. As such, Defendant's duties undertaken voluntarily and/or pursuant to contract included, but were not limited to:

- (i) Assisting with screening potential patients at Manage Care Intake check-in;

- (ii) Recognizing signs that an individual may hurt others and ensuring appropriate action was taken;
- (iii) Screening potential patients to determine whether treatment should be provided;
- (iv) Utilizing sound judgment and crisis intervention skills, including physical restraint, to prevent situations that may become harmful to the patient and others;
- (v) Instituting precautionary measures to prevent injuries to patients or others due to suicide, homicide, or elopement;
- (vi) Intervening as crisis counselors in situations requiring immediate psychological treatment such as substance abuse, suicide attempts, psychotic episodes, and other instances;
- (vii) Ensuring that individuals in crisis are delivered to qualified medical personnel when they indicate that they intend to hurt themselves or others; and
- (viii) Such other and further particulars as the evidence may show.

53. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

54. Defendant breached its duty and was negligent, grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to adopt and implement adequate safety procedures and policies;
- (ii) Failing to follow policies and procedures that were in place;
- (iii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;

- (iv) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (v) Failing to properly screen Mr. Hunt and appreciate the urgency of the situation and the danger presented by the particular circumstances given Mr. Hunt's statement that he wanted to hurt others;
- (vi) Failing to recognize the danger that Mr. Hunt posed to Plaintiff's decedent and others similarly situated if not closely supervised;
- (vii) Failing to utilize sound judgment and crisis intervention skills, including physical restraint, to prevent Mr. Hunt's elopement, which proximately caused Plaintiff's decedent's injuries and death;
- (viii) Failing to institute precautionary measures to prevent injuries and death to Plaintiff's decedent and others similarly situated proximately caused by Mr. Hunt's elopement;
- (ix) Failing to exercise reasonable care and take necessary precautions in the transport/escort of Mr. Hunt to the Emergency Department at NHB; and
- (x) Such other and further particulars as the evidence may show.

55. As a direct and proximate result of the negligent, grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

56. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant CasePro for actual and punitive damages in an amount to be determined by the Trier of fact.

**THIRD CAUSE OF ACTION**  
**(Punitive and Exemplary Damages)**  
**As to Defendant CasePro**

57. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

58. The actions and inactions of Defendant were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to the Plaintiff and injuries and death to the Plaintiff's decedent.

59. More specifically, Defendant acted with a conscious and flagrant disregard for the rights and safety of Plaintiff's decedent and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of JUSTIN NICHOLAS MILLER, by failing to anticipate the reasonably foreseeable risks that Calvin Hunt posed to him and others similarly situated, and failing to exercise even the slightest degree of care to prevent Mr. Hunt from eloping and injuring Plaintiff's decedent and others similarly situated.

60. Accordingly, Defendant is liable for punitive and exemplary damages awardable to Plaintiff.

61. WHEREFORE, Plaintiff demands judgment against Defendant CasePro for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as the Court or jury may deem just and proper.

**FOURTH CAUSE OF ACTION**

(Negligence: S.C. Code Ann. § 15-78-40/ Survival Action: S.C. Code Ann. § 15-5-90)

**As to Defendant SCOVA**

62. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

63. This action is brought pursuant to the South Carolina Tort Claims Act.

64. At all times relevant, SCOVA was and is an agency of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of SCOVA.

65. At all times relevant, Edward Ray was and is the Beaufort County Veterans Affairs Officer and an employee of SCOVA.

66. SCOVA is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

67. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

68. Moreover, SCOVA employee Edward Ray undertook a duty to monitor, supervise and/or control Calvin Hunt and ensure that he obtained care so as to prevent Calvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

69. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;



- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest degree of care in escorting Calvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

70. Defendant SCOVA's acts and/or omissions are independent and separate acts of negligence.

71. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered injuries, including excruciating pain and suffering, mental anguish, terror, knowledge of bodily injury and impending death, loss of income, funeral expenses, and such other damages as the Court or jury deems just and proper.

72. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

**FIFTH CAUSE OF ACTION**  
**(Wrongful Death: S.C. Code Ann. § 15-78-170)**  
**As to Defendant SCOVA**

73. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

74. This action is brought pursuant to the South Carolina Tort Claims Act.

75. At all times relevant, SCOVA was and is an agency of the State of South Carolina, and Beaufort County Office of Veterans Affairs was and is an extension of SCOVA.

76. At all times relevant, Edward Ray was and is the Beaufort County Veterans Affairs Officer and an employee of SCOVA.

77. SCOVA is liable for the negligent acts and omissions of Edward Ray, who was acting within the scope of his official duty at all relevant times.

78. Defendant owed Plaintiff's decedent, JUSTIN NICHOLAS MILLER, a duty to exercise reasonable care in performing its duties so as to prevent injury or death to Plaintiff's decedent and others similarly situated.

79. Moreover, SCOVA employee Edward Ray undertook a duty to monitor, supervise, and/or control Kalvin Hunt so as to prevent Kalvin Hunt from harming himself, Plaintiff's decedent, or others similarly situated.

80. Defendant breached its duties and was grossly negligent, careless, reckless, willful, wanton and malicious in one or more of the following ways:

- (i) Failing to follow policies and procedures that were in place;
- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Kalvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

81. Defendant SCOVA's acts and/or omissions are independent and separate acts of negligence.

82. As a direct and proximate result of the grossly negligent, willful, wanton and careless acts and/or omissions of Defendant, as set forth above, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendant's wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

83. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendant for actual damages in an amount to be determined by the Trier of fact.

**SIXTH CAUSE OF ACTION**  
**(Negligent Undertaking of Duty)**  
**As to All Defendants**

84. Plaintiff incorporates by reference all allegations contained in the Paragraphs above, as if set forth verbatim herein.

85. Defendants CasePro and SCOVA voluntarily undertook a duty to keep Calvin Hunt under supervision upon learning that he intended to hurt himself and others.

86. This duty was undertaken for the benefit of those whom it was reasonably foreseeable that Calvin Hunt would come into contact with and could subject to harm on February 25, 2012 including, but not limited to, Plaintiff's decedent JUSTIN NICHOLAS MILLER.

87. Defendants CasePro and SCOVA took actions they should have recognized as necessary for the protection of *inter alia* Plaintiff's decedent, JUSTIN NICHOLAS MILLER, and failed to exercise reasonable care in performing this undertaking by:

- (i) Failing to follow policies and procedures that were in place;

- (ii) Failing to ensure employees/agents had or received adequate experience, training, and supervision;
- (iii) Failing to exercise even the slightest degree of care in performing the duties owed to Plaintiff's decedent and/or those duties voluntarily undertaken;
- (iv) Failing to exercise even the slightest care in escorting Kalvin Hunt to the Emergency Department at NHB despite knowing that Mr. Hunt intended to injure himself and others; and
- (v) Such other and further particulars as the evidence may show.

88. The breach of this Duty by Defendants CasePro and SCOVA increased the risk of harm to Plaintiff's decedent, JUSTIN NICHOLAS MILLER; were of duties owed to Plaintiff's decedent, JUSTIN NICHOLAS MILLER, as an intended third party; and the harm Plaintiff's decedent, JUSTIN NICHOLAS MILLER, suffered was proximately caused by the breach of these voluntarily undertaken duties.

89. The breach of this Duty by Defendants CasePro and SCOVA was a proximate cause of the injury sustained by Plaintiff's decedent JUSTIN NICHOLAS MILLER.

90. As a direct and proximate result of this breach of Duty, Plaintiff and Plaintiff's decedent's beneficiaries have suffered damages, present and prospective, which are naturally the proximate consequence of the Defendants' wrongful acts, including pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, funeral expenses, and such other damages as the Court or jury deems just and proper.

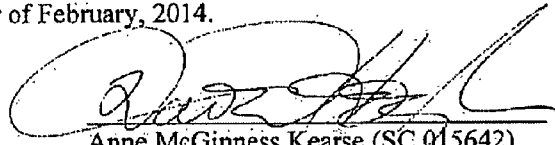
91. Plaintiff's decedent, JUSTIN NICHOLAS MILLER, has lost his life as set forth herein, and Plaintiff is informed and believes she is entitled to a judgment against Defendants.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays as follows:

1. For a trial by jury and judgment against the Defendants CasePro and SCOVA for actual and other compensatory damages as a jury may determine.
2. For exemplary and punitive damages against Defendant CasePro as a jury may determine to halt such conduct.
3. For the costs of this suit.
4. For such other and further relief to which she may be entitled and as this Honorable Court may deem just and proper.

Respectfully submitted this 21<sup>st</sup> day of February, 2014.



Anne McGinness Kearse (SC 015642)  
T. David Hoyle (SC 074055)  
W. Christopher Swett (SC 078251)  
**MOTLEY RICE LLC**  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29464  
(843) 216-9000 | (843) 216-9440 (Facsimile)

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(304) 594-2828 | (304) 594-2899 (Facsimile)

Attorneys for Plaintiff

LAW OFFICES

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A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

DOUGLAS W. MACKELCAN

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March 3, 2014

Jerri Ann Roseneau, Clerk  
Circuit Court of Beaufort County  
Post Office Box 1128  
Beaufort, SC 29901-1128

Re: Rebecca Delaney, as Personal Representative of the Estate of Justin Nicholas  
Miller v. CasePro, Inc. and Beaufort County  
C/A No.: 2012-CP-07-03782  
CCS File No.: 549-46690

Dear Ms. Roseneau:

Enclosed please find Defendant CasePro, Inc.'s Answer to Plaintiff's Amended Complaint regarding the above-referenced matter. Please file the original and return the file-stamped copy to our office in the enclosed self-addressed, stamped envelope.

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



DOUGLAS W. MACKELCAN

DWM:amc

Enclosures

cc: T. David Hoyle, Esq.  
Marshall H. Waldron, Jr., Esq.  
Crystal Lynn Castleberry, Esq.

|                               |   |                                      |
|-------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS         |
|                               | ) | THE FOURTEENTH JUDICIAL CIRCUIT      |
| COUNTY OF BEAUFORT            | ) | CASE NO.: 2012-CP-07-03782           |
|                               | ) |                                      |
| REBECCA DELANEY, AS THE       | ) |                                      |
| PERSONAL REPRESENTATIVE OF    | ) |                                      |
| THE ESTATE OF JUSTIN NICHOLAS | ) |                                      |
| MILLER,                       | ) |                                      |
|                               | ) | <b>ANSWER OF CASEPRO, INC. TO</b>    |
|                               | ) | <b>PLAINTIFF'S AMENDED COMPLAINT</b> |
|                               | ) | <b>(JURY TRIAL REQUESTED)</b>        |
| Plaintiff,                    | ) |                                      |
|                               | ) |                                      |
| vs.                           | ) |                                      |
|                               | ) |                                      |
| CASEPRO, INC. AND BEAUFORT    | ) |                                      |
| COUNTY                        | ) |                                      |
|                               | ) |                                      |
| Defendants.                   | ) |                                      |

COMES NOW CasePro, Inc, ("Defendant CasePro") Defendant in the above-styled civil action and presents this its Answer to the Amended Complaint and shows the Court as follows:

**FIRST DEFENSE**

At all times relevant to the matters complained of in the Amended Complaint, Defendant CasePro exercised that degree of skill and care required of it by law and did not act in a negligent, reckless, bad faith, malicious, or grossly negligent manner.

**SECOND DEFENSE**

The Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant CasePro and the Complaint against it should be dismissed pursuant to the provisions of SCRCP 12(b)(6).

### **THIRD DEFENSE**

The Plaintiff's damages, if any, may have been caused by the direct and proximate result of the negligence, recklessness, willfulness and wantonness of the decedent, and recovery should be barred or reduced in proportion to the decedent's negligence as provided by law.

### **FOURTH DEFENSE**

Some or all of Plaintiff's claims may fail for failure to join a necessary party under SCRCF Rule 12(b)(7) and/or SCRCF Rule 19.

### **FIFTH DEFENSE**

The claims for punitive damages, and the statutes of the State of South Carolina purporting to authorize those claims, violate this Defendant's rights as guaranteed under the Constitutions of the State of South Carolina and the United States of America. Furthermore, to the extent that the Defendants, or its agents or employees, are deemed to be employees of a governmental entity, then those claims for punitive damages fail as a matter of law.

### **SIXTH DEFENSE**

The injuries and damages sustained by the Plaintiff, if any, were due to, caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of persons or entities other than Defendant or its agents and employees.

### **SEVENTH DEFENSE**

Defendant CasePro had no right to, and did not exercise, control over the acts and/or omissions of the people alleged in the Amended Complaint to have acted on its behalf; therefore, Defendant CasePro cannot be held liable to the Plaintiff.



#### **EIGHTH DEFENSE**

In the event that the personnel at question in this suit are found not to be agents or employees of this Defendant at the time of the alleged tort, or are found not to have been acting within the course and scope of any agency with this Defendant, then this Court lacks jurisdiction over this Defendant. This Defendant makes this special appearance, contesting jurisdiction under said circumstances and specifically reserving all defenses as to personal jurisdiction.

#### **NINTH DEFENSE**

Defendant CasePro reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

#### **TENTH DEFENSE**

Defendant CasePro responds to the numbered Paragraphs and allegations of the Amended Complaint and shows the Court as follows:

1. Defendant Casepro denies each and every allegation in the Amended Complaint not specifically admitted herein.
2. Defendant CasePro denies the allegations of Paragraph 1.
3. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 2. Therefore, those allegations can neither be admitted nor denied at this time.

4. In response to Paragraph 3, Defendant CasePro admits only that it is a Texas corporation with its corporate headquarters and principal place of business in San Antonio, Texas, that it is authorized to transact business in South Carolina, and that it can be served via its registered agent for service of process: CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223. Defendant CasePro denies the remaining allegations of Paragraph 3 of the Complaint.

5. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 4. Therefore, those allegations can neither be admitted nor denied at this time.

6. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 5. Therefore, those allegations can neither be admitted nor denied at this time.

7. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 6. Therefore, those allegations can neither be admitted nor denied at this time.

8. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 7. Therefore, those allegations can neither be admitted nor denied at this time.

9. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 8. Therefore, those allegations can neither be admitted nor denied at this time.

10. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 9. Therefore, those allegations can neither be admitted nor denied at this time.

11. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 10. Therefore, those allegations can neither be admitted nor denied at this time.

12. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 11. Therefore, those allegations can neither be admitted nor denied at this time.

13. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 12. Therefore, those allegations can neither be admitted nor denied at this time.

14. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 13. Therefore, those allegations can neither be admitted nor denied at this time.

15. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 14. Therefore, those allegations can neither be admitted nor denied at this time.

16. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 15. Therefore, those allegations can neither be admitted nor denied at this time.

17. Responding to Paragraph 16, Defendant CasePro admits only that Edward Ray escorted Calvin Hunt to the NHB. Defendant CasePro lacks sufficient information to form a belief as to the remaining allegations of Paragraph 16. Therefore, those allegations can neither be admitted nor denied at this time.

18. Defendant CasePro denies the allegations of Paragraph 17.

19. Defendant CasePro admits the allegations contained in Paragraph 18.

20. Defendant CasePro admits the allegations of Paragraph 19.

21. Defendant CasePro denies the allegations contained in Paragraph 20.

22. Defendant CasePro denies the allegations contained in Paragraph 21.

23. Defendant CasePro denies the allegations contained in Paragraph 22.

24. Defendant CasePro denies the allegations contained in Paragraph 23.

25. Defendant CasePro denies the allegations contained in Paragraph 24.

26. Defendant CasePro denies the allegations contained in Paragraph 25.

27. Defendant CasePro denies the allegations contained in Paragraph 26.

28. Defendant CasePro denies the allegations contained in Paragraph 27.

29. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 28. Therefore, those allegations can neither be admitted nor denied at this time.

30. Defendant CasePro denies the allegations of Paragraph 29.

31. Defendant CasePro denies the allegations of Paragraph 30.

32. Defendant CasePro denies the allegations of Paragraph 31.

33. Responding to Paragraph 32, Defendant CasePro admits only that Calvin Hunt left the NHB property on foot. Defendant CasePro denies any remaining allegations in Paragraph 32.

34. Upon information and belief, Defendant CasePro admits Paragraph 33.

35. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 34. Therefore, those allegations can neither be admitted nor denied at this time.

36. Upon information and belief, Defendant CasePro admits Paragraph 35.

37. Responding to Paragraph 36, Defendant CasePro admits only that Mr. Miller died at or following the impact. Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of any remaining allegations contained in Paragraph 36. Therefore, those allegations can neither be admitted nor denied at this time.

38. In response to Paragraph 37, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 36.

39. In response to the allegations of Paragraphs 38 and 39, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for

certain personnel needs of the Navy, including the emergency department. Defendant denies the remaining allegations contained in Paragraphs 38 and 39.

40. Defendant CasePro denies the allegations contained in Paragraph 40 and shows this Amended Complaint does allege facts involving failure of persons to exercise professional medical judgment and skill.

41. Defendant CasePro denies the allegations contained in Paragraph 41, including all subparts.

42. Defendant CasePro denies the allegations contained in Paragraph 42, including all subparts

43. Defendant CasePro denies the allegations contained in Paragraph 43.

44. Defendant CasePro denies the allegations contained in Paragraph 44, including all subparts.

45. Defendant CasePro denies the allegations contained in Paragraph 45.

46. Defendant CasePro denies the allegations contained in Paragraph 46.

47. In response to Paragraph 47 of the Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 46.

48. In response to the allegations of Paragraphs 48 and 49, Defendant CasePro shows that it contracted with the Naval Medical Logistics Command to provide placement services for certain personnel needs of the Navy. Defendant denies the remaining allegations contained in Paragraphs 48 and 49.

49. Defendant CasePro denies the allegations contained in Paragraph 50 and shows that this Amended Complaint does allege facts involving failure of persons to exercise professional medical judgment and skill.

50. Defendant CasePro denies the allegations contained in Paragraph 51, including all subparts.

51. Defendant CasePro denies the allegations contained in Paragraph 52, including all subparts.

52. Defendant CasePro denies the allegations contained in Paragraph 53.

53. Defendant CasePro denies the allegations contained in Paragraph 54, including all subparts.

54. Defendant CasePro denies the allegations contained in Paragraph 55.

55. Defendant CasePro denies the allegations contained in Paragraph 56.

56. In response to Paragraph 57 of the Amended Complaint, Defendant incorporates as if fully set forth herein its responses to Paragraphs 1 through 56.

57. Defendant CasePro denies the allegations contained in Paragraph 58.

58. Defendant CasePro denies the allegations contained in Paragraph 59.

59. Defendant CasePro denies the allegations contained in Paragraph 60.

60. Defendant CasePro denies the allegations contained in Paragraph 61.

61. In response to Paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83 of the Amended Complaint, Defendant CasePro lacks sufficient information to form a belief as to the truthfulness of the allegations of these Paragraphs of the Complaint as they are directed to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

62. In response to Paragraph 84 of the Amended Complaint, Defendant CasePro incorporates as if fully set forth herein its responses to Paragraphs 1 through 83 herein.

63. Defendant CasePro denies the allegations contained in Paragraph 85 as they relate to it, and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 85 of the Complaint as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

64. Defendant CasePro denies the allegations contained in Paragraph 86 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 86 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

65. Defendant CasePro denies the allegations contained in Paragraph 87 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 87 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

66. Defendant CasePro denies the allegations contained in Paragraph 88 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of



Paragraph 88 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

67. Defendant CasePro denies the allegations contained in Paragraph 89 as they relate to it and lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 89 as they relate to Defendant SCOVA. Therefore, those allegations can neither be admitted nor denied at this time.

68. Defendant CasePro denies the allegations contained in Paragraph 90.

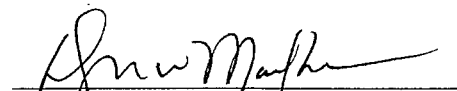
69. Defendant CasePro denies the allegations contained in Paragraph 91.

WHEREFORE, having fully responded to the Amended Complaint, Defendant CasePro prays that the Court dismiss Plaintiff's claims against it and award it any other costs or other relief the Court deems just and proper. Defendant CasePro further demands a trial by jury.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



D. GARY LOVELL, JR.

State Bar No.: 69293

DOUGLAS W. MACKELCAN

State Bar No.: 76332

Attorneys for Defendant CasePro, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
843-727-0307

REBECCA DELANEY, AS THE  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JUSTIN NICHOLAS  
MILLER,

Plaintiff,

vs.

CASEPRO, INC. AND BEAUFORT  
COUNTY

Defendants.

) IN THE COURT OF COMMON PLEAS  
) THE FOURTEENTH JUDICIAL CIRCUIT  
) CASE NO.: 2012-CP-07-03782

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

T. David Hoyle, Esq.  
Motley Rice, LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464

Crystal Lynn Castleberry  
Castleberry Law Offices  
3712 Swallowtail Drive  
Morgantown, WV 26508

Marshall H. Waldron, Jr., Esq.  
Griffith, Sadler & Sharp, P.A.  
Post Office Drawer 570  
Beaufort, SC 29901

This 3<sup>rd</sup> day of March, 2014.

Ann H. Crowder  
Assistant to D. Gary Lovell, Jr.

1                   IN THE COURT OF COMMON PLEAS IN THE  
2                   FOURTEENTH JUDICIAL CIRCUIT, IN  
3                   AND FOR BEAUFORT COUNTY, SOUTH CAROLINA

4   Rebecca Delaney, as Personal Representative of the Estate of  
5   Justin Miller,

6                   Plaintiff,

7   vs.

CASE NO. 2012-CP-07-03782

8   CasePro, Inc,

9                   Defendants.  
-----/

10                   JURY QUALIFICATION

11                   VOLUME 1

12  
13                   \*   \*   \*

14   TRIAL BEFORE:                   Honorable Diane Goodstein

15   DATE:                           October 6, 2015

16   TIME:                           Commenced at 9:30 a.m.  
17                                   Concluded at 5:30 p.m.

18   PLACE:                           Beaufort County Courthouse  
19                                   Beaufort, South Carolina

20   REPORTED BY:                   MONA WHIDDON, Stenographer

1 APPEARANCES:

2 REPRESENTING THE DEFENDANT, CasePro:

3 Doug MacKelcan, III, Esquire  
4 Dennis Gary Lovell, Jr, Esquire  
5 Alendra Marie Saber, Esquire  
6 Carlock Copeland & Stair, LLP  
7 40 Calhoun St, Suite 400  
8 Charleston, SC 29401

9 REPRESENTING THE PLAINTIFF(S):

10 Thomas David Hoyle, Esquire  
11 Temitope Olamide Leyimu, Esquire  
12 William Christopher Swett, Esquire  
13 Motley Rice LLC  
14 20 Bridgeside Blvd.  
15 Mt. Pelasant, SC 29464

16 and

17 Crystal Lynn Castleberry, Esquire  
18 Castleberry Law Offices  
19 3712 Swallowtail Drive  
20 Morgantown, WV 26508

21

22

23

24

25

## JUROR QUALIFICATION

1 PROCEEDINGS

2 THE CLERK: Ladies and gentlemen, momentarily  
3 the Honorable Diane Goodstein will be entering the  
4 courtroom and going through the process of  
5 qualifying you as jurors. She will be asking you  
6 questions. Listen carefully. If any of it  
7 applies to you, please let us know.

8 THE COURT: Is everybody happy? You came for  
9 jury service, yay. Let me introduce myself. I'm  
10 Diane Goodstein. I'm one of two resident judges  
11 from the First Judicial Circuit which is under  
12 water today. You are in the 14th judicial  
13 circuit, not under water today. The 1st is  
14 Dorchester, Georgetown and Calhoun Counties. The  
15 14th is Colleton, Beaufort, Allendale, Hampton and  
16 Jasper. How did I do?

17 THE CLERK: Very well.

18 THE COURT: Thank you. And I understand that  
19 a number of you came yesterday, and for those of  
20 you that came yesterday for your jury service, I  
21 want to thank each and every one of you for coming  
22 yesterday. There was an order that went out  
23 Sunday evening, late Sunday evening, that actually  
24 canceled court for yesterday, for Monday. And you  
25 didn't get word of that. Well, there were lots of

## JUROR QUALIFICATION

1 people that didn't actually get word of it around  
2 the State, so for those of you that did arrive, I  
3 want to thank you for coming yesterday. And I  
4 doubly want to thank you for returning today,  
5 because you probably thought, I'll use my excuse  
6 for yesterday and today. So, I want to thank you  
7 all for being here.

8 You know, in the United States we are a  
9 citizen-based judicial system, and because of that  
10 if you were not here there would be no reason for  
11 any of us to be here. Because we need you to help  
12 your fellow citizens to resolve disputes.

13 That is what we are about in our entire  
14 system, is the resolution of disputes. Whether it  
15 is on the criminal side or civil side, we are a  
16 citizen-based judicial system. When it is a  
17 criminal matter, we know that one side of the  
18 equation will be the State, always. And then  
19 there will be someone on the other side that the  
20 State alleges has violated one or more of the  
21 criminal laws of the State of South Carolina. And  
22 the jury needs to make the finding of fact to make  
23 a determination whether that person is guilty or  
24 not guilty.

25 On the civil side we have individuals on both

## JUROR QUALIFICATION

1 sides of the equation and there's a dispute that  
2 has arisen and we call on citizens to come into  
3 court and help those fellow citizens resolve  
4 disputes. That is what we are about this week.  
5 This is a term of civil court or common pleas. We  
6 are going to ask your assistance to help fellow  
7 citizens do just that, resolve disputes. So, that  
8 is our goal this week.

9 I will tell you, ladies and gentlemen, that  
10 while I'm certainly cognizant as to all of these  
11 folks, each and every tick of the clock you are  
12 present in court. I want you to know that we will  
13 keep your time to a minimum, but some times this  
14 week you may feel time clicking away while you are  
15 cooling your heels. But I'll assure you that  
16 while you are here we are working to assure that  
17 your time is as limited as it can be.

18 Now, you have been through the role call  
19 process, as it's known. And in just a moment I  
20 have statutorily-mandated questions that I must  
21 ask of you. And I know that you have met the  
22 folks who are here in the courtroom, right? Yes.  
23 Wonderful. Because we have this incredible Clerk  
24 of Court who you all have met, who I know  
25 introduced herself. I will tell you that working

## JUROR QUALIFICATION

1 with her is one of the treats of my professional  
2 life. She is competent. She is efficient. She  
3 is a joy to be around, as is her staff. So, I'm  
4 delighted that she has taken care of all of that  
5 this morning.

6 Now, ladies and gentlemen, I'm -- the next  
7 portion of your qualification is that there's  
8 certain statutory questions that I have to ask of  
9 you. And once we have done that we will take a  
10 break, you will be ready at that point, and then  
11 I'll come back after our break and I'll read you a  
12 short, non-argumentative statement of the facts of  
13 the first case for trial. I'll introduce you to  
14 some folks. And I'm going to ask you some  
15 additional questions and then we are going to  
16 actually get our jury for our first case for  
17 trial.

18 Those of you who will then be known as our  
19 "remaining jurors," I'll give you instructions of  
20 how we will stay in contact with you over the  
21 week.

22 THE CLERK: Your Honor, this is the case that  
23 we have this week, so she will be excused.

24 THE COURT: Great. Got it. So, very well.  
25 And you have asked them about their driver's



## JUROR QUALIFICATION

1 license? Have you done that?

2 THE CLERK: No, I have not. I didn't address  
3 any of that. You get to do that.

4 THE COURT: Great, great, great. Ladies and  
5 gentlemen, I'm going to begin by establishing that  
6 you are all here appropriately. We receive our  
7 names of jurors from three sources: From the  
8 voter registration roles of Beaufort County and  
9 from the South Carolina Department of Public  
10 Safety, it used to be known as the Highway  
11 Department, it's now known as the Department of  
12 Public Safety in the form of driver's licenses and  
13 identification cards. If you do not have at least  
14 one of those three indicia of identification, you  
15 don't have to have it with you, although if you  
16 drove and don't have your driver's license that  
17 could be a problem. But you do not have to have  
18 one of these with you, you just have to have one  
19 in your world.

20 Either you are a registered voter or  
21 identification card or issued driver's license  
22 from the Department of Public Safety. Again, you  
23 don't have to have it with you, you just have to  
24 have one. If you don't have one of those three  
25 indicia of identification, I don't know how you

## JUROR QUALIFICATION

1       were so lucky to be with us this morning. Maybe  
2       you followed everybody off of the sidewalk to see  
3       what was going on.

4               But if you don't have at least one of those  
5       in your world, I would ask you to stand at this  
6       time.

7               (No response.)

8               I find no one standing.

9               Now, ladies and gentlemen, let's talk about  
10       these questions that I'm about to ask of you. The  
11       first thing that I want to tell you is that they  
12       are statutorily mandated, which means that I have  
13       to ask them of you. And some of them are not  
14       personal at all, some of them are a little more  
15       personal, and I have to have accurate information  
16       commensurate with the oath that you have taken.  
17       And if you do not give me accurate information,  
18       then you will have violated your oath and that  
19       would also be contempt of court. So I know that  
20       I'm going to get accurate information from each  
21       and every one of you.

22               But to facilitate that, I want to tell you  
23       this: If I ask a question and you think that you  
24       might be embarrassed if you had to stand and  
25       disclose that information in the presence of your

## JUROR QUALIFICATION

1        fellow jurors, at the end of this part of the  
2        process I'm going to issue an opportunity, an  
3        invitation, for you to come forward and disclose  
4        that information a little bit more privately with  
5        our court reporter, of course, and our clerk.

6                If, however, you choose not to stand and  
7        disclose that information in the presence of your  
8        fellow jurors and you choose not to come forward,  
9        again, that would be a violation of your oath. So  
10       if you would prefer to come forward and disclose  
11       that information, just remember to come forward  
12       when I ask you to do so.

13               Now, here are the questions which determine  
14       your general eligibility to serve. Is any member  
15       of our jury panel not a citizen of the United  
16       States? If you are not a citizen of the United  
17       States, please stand.

18                                (No response.)

19               I don't find no one standing.

20               Is any member of our jury panel not now a  
21       citizen and resident of Beaufort County? If you  
22       are not now a citizen and resident of Beaufort  
23       County, please stand.

24                                (No response.)

25               I find no one standing.

## JUROR QUALIFICATION

1           Do we have any member of our jury panel who  
2           is unable to read, write, speak or understand the  
3           English language? If you cannot read, write,  
4           speak or understand the English language, please  
5           stand. Now, I know somebody out there is  
6           thinking, If you don't understand the English  
7           language how are you supposed to understand that  
8           you are being asked if you understand the English  
9           language. I don't know the answer to that, that's  
10          why I tell folks these are statutorily mandated.  
11          So if you see someone who is sitting near you and  
12          you think that don't they speak the English  
13          language, maybe they're speaking Klingon, just let  
14          me know. Clue me in later. Wonderful. Yes?

15                UNIDENTIFIED JUROR: My name is (inaudible).  
16           I don't know how well my English language -- it is  
17           for me okay. But English is my third language  
18           and --

19                THE COURT: Third language. And I have  
20           enough trouble with it as my first. I'm so  
21           impressed. That's wonderful. Let me ask you  
22           this: Do you read?

23                JUROR: Yes, I read.

24                THE COURT: You like to read?

25                JUROR: Yes. I write also, but --

## JUROR QUALIFICATION

1 THE COURT: And your spoken --

2 JUROR: My dialect is not good.

3 THE COURT: Your spoken English is beautiful.

4 JUROR: Okay.

5 THE COURT: That's amazing. I'm so  
6 impressed. Do you mind if I ask what your other  
7 two are? That's so impressive.

8 JUROR: I speak in Spanish and Italian also.

9 THE COURT: I'm so impressed. That's --  
10 you're obviously brilliant. I'm so honored to  
11 have you stay with us. Thank you so much. Yes.

12 I'm from Dillon and English is a bit of a  
13 struggle. Just teasing. Anyone here from Dillon,  
14 I'm just teasing.

15 All right. Now, ladies and gentlemen, do we  
16 have any member of our jury panel who has less  
17 than a sixth-grade education or its equivalent?  
18 Let me tell you what we mean by equivalent. I  
19 think if you're working, paying your bills, doing  
20 all of that stuff that you have to do every single  
21 day just to get by, you have a lot more than a  
22 sixth-grade education or equivalent. But that's  
23 the question: Do you have a sixth-grade  
24 education -- less than a sixth-grade education or  
25 its equivalent, if so you can certainly stand and

## JUROR QUALIFICATION

1 disclose that information or come up at the end.

2 (No response.)

3 And I find no one standing.

4 Do we have any member of our jury panel who  
5 is unable, who is not able, by reason of a  
6 physical or mental infirmity, a physical or mental  
7 problem, and as a result you believe that you are  
8 unable, you would not be able to render efficient  
9 jury service?

10 Now, ladies and gentlemen, for example, if  
11 you have a medical condition that you are  
12 concerned might keep you from being able to serve  
13 on the jury this week. Let me tell you a little  
14 bit about how we are going to be proceeding, so  
15 you will know a little bit.

16 Ladies and gentlemen, we're going to begin in  
17 the morning between 9 and 9:30 and we're going to  
18 work for about an hour and a half. Then we'll  
19 take our morning break. We'll come back from our  
20 morning break and then we'll work until our lunch  
21 break, which is around 1:00. We'll take between  
22 an hour, hour and a half for lunch. We'll come  
23 back after lunch and we'll work again for about an  
24 hour and a half. And then we'll take our  
25 afternoon break. And then we're going to conclude

## JUROR QUALIFICATION

1 in the afternoon between 5 and 5:30, typically.

2 Now, here is the thing. I want you to be  
3 able to serve on the jury this week. So if we can  
4 accommodate you, we will absolutely be excited to  
5 accommodate you. In other words, if you need to  
6 take a little more frequent break, not a problem.  
7 If you need -- some people say, I have a hearing  
8 issue. I think that's my issue and not your  
9 issue. I can accommodate that. Some folks need  
10 to sometimes stop and have a little snack, because  
11 maybe you're on medicine or whatever, that's not  
12 going to be a problem. In other words, if I can  
13 accommodate you so that you're able to serve, I'll  
14 be so excited to do that, because I want you to be  
15 able to serve with us this week. So I want you to  
16 keep that in mind as well, as well as our  
17 schedule.

18 So you can stand now and disclose any  
19 information in response to this question, or you  
20 can certainly come up at the end.

21 (No response.)

22 And I find no one standing.

23 Do we have any member of our jury panel who  
24 has been convicted, that's either by a guilty plea  
25 or by a trial of a crime punishable by

## JUROR QUALIFICATION

1       imprisonment more than a year and your civil  
2       rights have not been restored by pardon or  
3       amnesty? Now, punishable by imprisonment for more  
4       than a year means that you could have received  
5       punishment of more than a year in prison, maybe  
6       you received a probation sentence or a fine. But  
7       what's relevant is that you could have received  
8       punishment of more than a year in prison and your  
9       civil rights have not been restored by pardon or  
10      amnesty. Now, you can stand and disclose the  
11      information or certainly come up at the end.

12                               (No response.)

13               Good, I find no one standing.

14               Do we have any member of our jury panel who  
15      has served as a member of the grand jury here in  
16      Beaufort County in the last five years? If so,  
17      please stand.

18               JUROR: I don't know when the last time I  
19      served was.

20               THE COURT: Were you on regular jury or the  
21      grand jury?

22               JUROR: Grand jury.

23               THE COURT: The grand jury?

24               JUROR: Yes.

25               THE COURT: Okay. And your juror number is?



## JUROR QUALIFICATION

1 JUROR: 362.

2 THE COURT: We will take a look. All right.

3 The grand jury is one of those things, if you  
4 served on it you would know it. There won't be  
5 any question in your mind. It's different than a  
6 trial jury or petit jury. All right. Very well.

7 Now, do we have any member of our jury panel  
8 who is a clerk or a deputy clerk of court,  
9 constable, sheriff, or other commission --  
10 commissioned law enforcement officer, county  
11 officer, county commissioner, probate judge, or  
12 any person employed within the walls of any  
13 courthouse? If so, please stand at this time.

14 (No response.)

15 And I find no one standing.

16 And do we have any member of our jury panel  
17 who has previously served on jury duty in a court  
18 of record, that's not magistrates court or  
19 municipal court, but common pleas or general  
20 sessions during calendar year 2015? If so, please  
21 stand.

22 (No response.)

23 I find no one standing.

24 Now, ladies and gentlemen, we are now going  
25 to move to juror exemption. An exemption doesn't

## JUROR QUALIFICATION

1 mean that you are not qualified to serve, it  
2 simply means that you have the option -- you have  
3 the right to say, Thank you, but I don't want to  
4 serve, I choose not to serve. And our first  
5 exemption is a great example, so I'm going to use  
6 it as an example of what I mean by an exemption  
7 and it's this: Ladies and gentlemen, people who  
8 are 65 years old or older are entitled by state  
9 law to an exemption. The reason for that is by  
10 the time that you have reached the young age of  
11 65 -- the closer I get, the younger it gets -- the  
12 young age of 65 years old, you have perhaps  
13 volunteered, perhaps you have served in the  
14 military, no doubt that you have paid taxes for a  
15 long time and our Legislature has deemed that you  
16 deserve an exemption.

17 In other words, you can choose to serve or  
18 not serve, it's up to you. Now, I want you to  
19 know that you are more than welcome, more than  
20 wanted, to serve. Because jurors who are 65 years  
21 old or older obviously represent a pool of  
22 fabulous talent for juries because of your life  
23 experiences. So, folks who are 65 years old or  
24 older represent a pool of terrific talent for  
25 juries, but state law says that you are entitled

## JUROR QUALIFICATION

1 to an exemption should you choose to exercise it.

2 So I ask, do we have any jurors who are 65  
3 years old or older and you wish to be exempted  
4 from your jury selection? If so, please stand at  
5 this time.

6 (No response.)

7 And I find no one standing.

8 Now, our next exemption concerns those of you  
9 who have served on jury duty in prior years.  
10 Ladies and gentlemen, a moment ago I asked if  
11 there was anyone that served in 2015. That  
12 disqualifies jurors from further service in the  
13 same year. But prior jury service also gives rise  
14 to an exemption, because no juror is required to  
15 serve more than once in three years in a court of  
16 record. Not magistrate or municipal court.

17 So, I ask, Do we have any members of the jury  
18 panel who served as a juror during calendar year  
19 2013 or 2014 and who wish to be exempted from your  
20 jury selection. If so, please stand.

21 JUROR: I have -- I was on a criminal jury, I  
22 think, about three years ago, but I don't need to  
23 be excused. Seventy.

24 THE COURT: Yay, celebrating 70, wonderful,  
25 wonderful. Thank you.

## JUROR QUALIFICATION

1 JUROR: Number 160. And I served July of  
2 last year.

3 THE COURT: All right. And do you wish to be  
4 excused?

5 JUROR: Yes, ma'am.

6 THE COURT: You are free to go then, sir.

7 THE BAILIFF: One more standing also, Judge.

8 THE COURT: Yes, ma'am, your number?

9 JUROR: 151. I was over at that other one  
10 across the way here, but they canceled it when I  
11 went in.

12 THE COURT: You were in the jury assembly  
13 room.

14 JUROR: No, in the other building.

15 THE COURT: That is magistrate court. We get  
16 to keep you.

17 JUROR: Okay.

18 THE COURT: She is not smiling with me. Oh  
19 yes, she is. Yes, she is.

20 THE COURT: Mr. 382, you don't have to stand,  
21 you are fine. I'm so glad to tell you that you  
22 served on the regular jury panel but it was  
23 September 2012. How time flies. September, 2012.  
24 So I'm doing a happy dance up here.

25 JUROR: Oh, I couldn't remember.

## JUROR QUALIFICATION

1           THE COURT: It is amazing how time -- think  
2           about that.

3           JUROR: I don't have a problem.

4           THE COURT: And you would have thought that  
5           it was like a couple of months ago. All right  
6           now. I have already asked the one about the grand  
7           jury. Our next exemption deals with those of you  
8           who have small children. I need you to listen  
9           very carefully. This particular exemption has  
10          several parts and each and every part has to apply  
11          for to you be exempted on this basis. You may be  
12          exempted from the jury selection if you have a  
13          small child or children under the age of seven,  
14          six years or younger, and you are the legal  
15          custodian of one under the age of seven, and you  
16          are the principal caregiver for that child under  
17          the age of seven. And quite frankly, you don't  
18          have anyone to care for your child or children  
19          while you perform your jury duty. Now, if this  
20          exemption applies to you and you need to exercise  
21          this exemption, please stand at this time.

22          (Juror stands.)

23          THE COURT: Your number?

24          JUROR: I'm 329.

25          THE COURT: Yes, ma'am, you have a little

## JUROR QUALIFICATION

1           one?

2           JUROR: Six and 11.

3           THE COURT: You have no one to leave your  
4           little ones with?

5           JUROR: The person who cares for them is out  
6           sick.

7           THE COURT: Out sick. Got you. Got you.  
8           Very well. Can I transfer your service? Under  
9           normal circumstances would you be able to serve?

10          JUROR: If the caregiver wasn't sick. She  
11          has cancer right now.

12          THE COURT: So, that is a long-term  
13          situation.

14          Very well. I am excusing you on that basis,  
15          because you have changed your lifestyle to  
16          accommodate. And your number?

17          JUROR: 329.

18          THE COURT: We will miss you. Very well.  
19          Unfortunately, this is the bad news. Your six  
20          year old will be 27 when you blink your eyes. My  
21          27 year old last week was six.

22          All right. Our next exemption deals with  
23          those of you who may be attending school at this  
24          time or working in some capacity with the school.  
25          If this exemption applies to you and you need to

## JUROR QUALIFICATION

1 exercise it, which is fine, we will transfer your  
2 service to another term of court when your school  
3 responsibilities and juror responsibilities will  
4 not conflict. Do we have any members of the jury  
5 employed, full-time student, teacher, school  
6 crossing guard, school bus driver, or works in any  
7 other school-related function and cannot serve  
8 this week as a result of that school  
9 responsibility? If this exemption applies to you,  
10 please stand at this time.

11 (Juror stands.)

12 THE COURT: Yes, ma'am. Your number?

13 JUROR: 69.

14 THE COURT: 69, yes, ma'am. You are a?

15 JUROR: I am a special needs monitor.

16 THE COURT: Bus driver?

17 JUROR: Monitor.

18 THE COURT: Monitor, got you. Come on up and  
19 pick your week and we will transfer your service.

20 THE COURT: You want to transfer?

21 JUROR: If I let my manager know.

22 THE COURT: If you let your manager know.

23 Okay. You can stay. If you are selected to serve  
24 you can let your manager know. Okay. Thank you.

25 Reverse those steps. Thank you.

## JUROR QUALIFICATION

1 (Juror stands.)

2 THE COURT: Oh, yes. Hi.

3 JUROR: (Juror 151) I work for McDonald's. I  
4 work today.

5 THE COURT: You work for McDonald's, like the  
6 restaurant?

7 JUROR: Yes.

8 THE COURT: Okay. You work for McDonald's  
9 and Carolina Cleaning?

10 THE COURT: Okay. And is either one of those  
11 school related?

12 JUROR: I work Monday, Wednesday, Friday at  
13 school, district 3, and then at McDonald's the  
14 other days.

15 THE COURT: Got you. In other words, Monday  
16 Wednesday and Friday you work for the school  
17 district?

18 JUROR: Yes, three.

19 THE COURT: School district three.

20 JUROR: Uh-huh. (Indicating affirmatively.)

21 THE COURT: Got you. I'm getting there. I  
22 can be taught.

23 JUROR: I work at McDonald's from 2 to 9  
24 today.

25 THE COURT: Okay. But Monday, Wednesday and



## JUROR QUALIFICATION

1 is Friday you work at the school district?

2 JUROR: Uh-huh. (Indicating affirmatively.)

3 THE COURT: What do you do for the school  
4 district?

5 JUROR: Clean.

6 THE COURT: You are a cleaner for the school?

7 JUROR: Yes.

8 THE COURT: You need to transfer your service  
9 because of your school-related function?

10 JUROR: I don't understand none of this stuff  
11 here at all. If I was selected I wouldn't  
12 understand.

13 THE COURT: Got you. I'm with you. I'm with  
14 you. Why don't you do this, why don't you come up  
15 at the end and let us chat for a moment.

16 JUROR: Okay.

17 THE COURT: Does that work?

18 JUROR: Yes.

19 THE COURT: Wonderful. Thank you now. Now,  
20 do we have any members of the jury panel who is  
21 employed as a guard with the Department of  
22 Corrections penitentiary? If so, please stand  
23 because State law says that you are going to be  
24 exempt. Anybody a guard?

25 (No response.)

## JUROR QUALIFICATION

1           THE COURT: Very well. Do we have any  
2 members of the jury panel who are primary  
3 caregiver for someone who is 65 years old or older  
4 or somebody who is severely disabled and as a  
5 result the person for whom you care simply cannot  
6 be left alone and would be obviously at risk if  
7 you were required to perform your jury duty? If  
8 this exemption applies to you and you need to  
9 exercise this exemption, please stand at this  
10 time. Sixty-five years or older or someone  
11 severely disabled that you care for.

12           (No response.)

13           THE COURT: Very well. I find no one  
14 standing.

15           Now, ladies and gentlemen, do we have a  
16 member of our jury panel who performs services for  
17 a business, commercial or agriculture  
18 enterprise --

19           THE COURT: -- which must close if you were  
20 required to perform your jury duty? If so, please  
21 stand at this time. I didn't know that I have  
22 jurors over there.

23           (Juror stands.)

24           JUROR: I have a furniture store and it's  
25 just me. So I had to close today.

## JUROR QUALIFICATION

1           THE COURT: A furniture store and you are the  
2           only person in the furniture store? So, when  
3           someone comes in and buys the 8,000-pound  
4           armoire --

5           JUROR: It's not happening today.

6           THE COURT: Tomorrow there will be more  
7           people there?

8           JUROR: No, it's just me. I do the design,  
9           the painting, and it's just me.

10          THE COURT: That is great. Okay. very well.  
11          This applies to you.

12          JUROR: Okay.

13          THE COURT: Very well. Thank you for being  
14          here.

15          JUROR: I can do it at another time if I have  
16          an employee.

17          THE COURT: Well, do you think that you are  
18          going to do that? You can transfer.

19          JUROR: Would I have to have time like down  
20          the road?

21          THE COURT: You can pick it. It's out of my  
22          control.

23          JUROR: It can it be like a year later?

24          THE COURT: Whenever you want it. Come and  
25          pick a week then. That is wonderful, we should

## JUROR QUALIFICATION

1 all go shopping with you.

2 THE COURT: All right. Now, ladies and  
3 gentlemen, that concludes our list of  
4 qualifications and exemptions for jury service.  
5 It may be that you are qualified and no exemption  
6 applies to you, but jury service this week would  
7 constitute an extreme hardship on you for a  
8 particular reason. I cannot excuse a qualified  
9 juror from jury service. But under extreme and  
10 compelling circumstances I can transfer a juror  
11 from this term of court to another term of court  
12 at which time your extreme and compelling  
13 circumstances will not exist.

14 Let me give you some examples. Ladies and  
15 gentlemen, you may have a doctor's appointment  
16 later this week. I don't want anybody missing a  
17 doctor's appointment. I'm going to transfer your  
18 service. You may have a loved one who has a  
19 doctor's appointment later this week and they are  
20 counting on you being with them. Maybe they're  
21 having treatment of some sort later this week and  
22 they're counting on you being with them. I'm  
23 going to transfer your service for that reason.

24 It may be that you have inventory at your  
25 place of employment and this -- this is the day of

## JUROR QUALIFICATION

1       the inventory that happens once a year and you're  
2       in charge of that inventory. I'm going to  
3       transfer your service. It may be that you floated  
4       here this morning in your duck vehicle or your  
5       kayak. I'm going to transfer your service if you  
6       are suffering in some form or fashion as a result  
7       of all of the water that has inundated our state  
8       over the last several days.

9               So if anyone needs to transfer, I'll need to  
10       speak to you about that in just a moment. And in  
11       just a moment those of you who did not disclose  
12       that more personal information that I asked you  
13       about, I'm going to ask you to approach as well.

14              But before we do that, I'm very briefly going  
15       to go over your qualifications for your jury  
16       service. You must be a citizen of the United  
17       States. You must be a citizen and resident of  
18       Beaufort County. You must have a sixth grade  
19       education or its equivalent. You must be able to  
20       read, write, speak and understand the English  
21       language. You must be able physically and  
22       mentally to render efficient jury service. You  
23       must not have served on jury duty in a court of  
24       record during calendar year 2015. You must not be  
25       a clerk, deputy clerk of court, constable, sheriff

## JUROR QUALIFICATION

1 or other commissioned law enforcement or employed  
2 within the walls of the courthouse. And you must  
3 not have been convicted of a crime punishable by  
4 imprisonment for more than a year and your civil  
5 rights not restored by pardon or amnesty.

6 Now, if any of these qualifications concerns  
7 you or if you have a question about any of these  
8 qualifications as they may apply to you in your  
9 particular circumstance, or if you have a question  
10 or a concern about any of the exemptions and how  
11 the exemption may apply to your particular  
12 circumstance, or if you need to seek a transfer to  
13 another term of court because of severe and  
14 compelling circumstances, or if you need to  
15 disclose information more privately with me and  
16 our court reporter and our clerk, please come  
17 forward at this time.

18 All right. Yes?

19 THE BAILIFF: Juror 69, Your Honor.

20 JUROR: I have been charged, but it wasn't  
21 here.

22 THE COURT: Yeah, did you go to the  
23 Magistrates Court?

24 JUROR: It wasn't here. It was in Savannah.

25 THE COURT: It was in Savannah. What was the

## JUROR QUALIFICATION

1 charge?

2 JUROR: Shoplifting.

3 THE COURT: First?

4 JUROR: Yes.

5 THE COURT: Okay, you're fine. You're good  
6 to go.

7 JUROR: Thank you. Yes?

8 THE BAILIFF: Juror 151, Your Honor.

9 THE COURT: She's staying.

10 JUROR: This is the first time I've ever been  
11 in, doing any of this kind of stuff.

12 THE COURT: Got it.

13 JUROR: I don't want -- I would not  
14 understand none of this stuff.

15 THE COURT: How far did you go to the school?

16 JUROR: I graduated, but I was in the special  
17 education. So I don't understand big words and  
18 stuff.

19 THE COURT: And you're concerned about your  
20 ability to understand what's going on.

21 JUROR: Uh-huh, and I'm 51.

22 THE COURT: You're 51?

23 JUROR: Uh-huh, years old.

24 THE COURT: Well, you don't look it. You  
25 look 31. Keep it up.

## JUROR QUALIFICATION

1 JUROR: I've got a twin too, so.

2 THE COURT: Oh, you do. That's so cool. All  
3 right. And you work all the time too?

4 JUROR: Yeah, I work at McDonald's and  
5 Carolina Cleaning at the Holy Trinity.

6 THE COURT: Yeah. And you work at the school  
7 district?

8 JUROR: No, it's for Carolina Cleaning.

9 THE COURT: I'm with you.

10 JUROR: I'm just cleaning that one, Monday,  
11 Wednesday and Friday, and the rest is McDonald's.

12 THE COURT: Gotcha. Y'all serving breakfast  
13 like all day long now, right?

14 JUROR: Oh, yeah.

15 THE COURT: Are you ready for that?

16 JUROR: Yes.

17 THE COURT: I will excuse you on that basis.

18 JUROR: All right. Thank you.

19 THE COURT: Thanks for coming in here today.

20 JUROR: I wish I would understand a lot of  
21 this stuff, but I don't at all.

22 THE COURT: Well, that's okay. I'm glad  
23 McDonald's is serving breakfast all day. Just  
24 take care of that and we'll all be good.

25 THE BAILIFF: Yes, ma'am?



## JUROR QUALIFICATION

1 JUROR: Will they call me back on a jury  
2 again?

3 THE BAILIFF: No, all you got to do is give  
4 them that badge and you're free to go.

5 JUROR: No, I have another one in Charleston  
6 in November too.

7 THE COURT: You do. They're lucky to have  
8 you down there.

9 So I -- just for the record, I observed that  
10 while she's very articulate her mental challenges  
11 are pretty evident, and I think she's correct in  
12 that she would have difficulty understanding and  
13 following the simplest of issues, just given her  
14 responses during the qualification. And on that  
15 basis I have excused her, and wanted to make a  
16 record of my observations during this process.

17 Okay.

18 THE BAILIFF: Juror 71, Your Honor.

19 THE COURT: Hello. Let me guard people from  
20 the wires.

21 JUROR: I have no problem serving or  
22 anything, but I have tickets to Ireland next  
23 Wednesday. Will we be done?

24 THE COURT: We may not be. I'm not certain  
25 of it, and I think it's probably better that we

## JUROR QUALIFICATION

1 transfer you to another term of court.

2 JUROR: Okay.

3 THE COURT: And can I go with you?

4 JUROR: We've been planning this trip for two  
5 years, and it's next week.

6 THE COURT: That's fine. Just pick a week.  
7 That was 71.

8 THE BAILIFF: Juror 356, Your Honor.

9 JUROR: I have a previously arranged business  
10 trip. Invested about \$700 in the air fare. I  
11 leave Thursday morning.

12 THE COURT: Where are you going?

13 JUROR: Going first to Springfield then to  
14 Pittsburgh then back to Springfield, Mass up to  
15 Bangor, Maine and then by Amtrac back here.

16 THE COURT: Okay.

17 JUROR: Well, I'm sure that's -- just looking  
18 at these people will tell you that it would be a  
19 fun case. And they look serious too, it's sort of  
20 scary.

21 THE COURT: They're very serious. I will  
22 transfer your service, if you will just go pick  
23 your week.

24 JUROR: Thank you.

25 THE BAILIFF: Juror 243, Your Honor.

## JUROR QUALIFICATION

1 JUROR: (Inaudible).

2 THE COURT: Gotcha. And that's this week?

3 JUROR: Yes.

4 THE COURT: Okay. Just pick a week.

5 JUROR: My daughter didn't make it yet.

6 THE COURT: And he's supposed to?

7 JUROR: Yes.

8 THE COURT: Very well. If you'll just pick a  
9 week, and we'll see you soon.

10 THE BAILIFF: Juror 85, Your Honor.

11 JUROR: I'm a sole caregiver of my other half  
12 who's 75. He has Alzheimer's. He's with my  
13 neighbor today.

14 THE COURT: I understand.

15 JUROR: I work part-time at the hospital,  
16 which is five minutes from home. Being an hour  
17 from home is too much. It's out of my comfort  
18 zone.

19 THE COURT: I understand. I'm with you.  
20 I'll excuse you on that basis. Thank you so much  
21 for being here today, and I hope that he's well.

22 She's excused.

23 THE BAILIFF: Juror 216, Your Honor.

24 JUROR: I have a dental conference (phonetic)  
25 if we are finished by that time.

## JUROR QUALIFICATION

1 THE COURT: I will be finished before 3:30.

2 JUROR: All right, then I'm fine.

3 THE COURT: Thank you so much.

4 THE BAILIFF: Juror 268, Your Honor.

5 JUROR: I want to transfer if I can. See I  
6 transferred before, but I have a friend here from  
7 Canada and their conference was canceled in  
8 Charleston because of the weather. They're stuck  
9 there. I need to go fetch them tomorrow from  
10 Charleston. I know it's not a --

11 THE COURT: Have you transferred before?

12 JUROR: I just postponed my date once to this  
13 date.

14 THE COURT: Okay. All right. Given the fact  
15 that you're fetching people because of what's  
16 going on in Charleston, normally we don't transfer  
17 but once but this is exigent and unusual.

18 JUROR: Thank you.

19 THE COURT: Very well. If you'll pick a  
20 week.

21 THE CLERK: Transfer then?

22 THE COURT: All right. I find the panel is  
23 now qualified. Ladies and gentlemen, we're going  
24 to take a break. This is our official time  
25 keeper, and I'm going to meet with the lawyers

## JUROR QUALIFICATION

1       just a moment. When we return I'm going to read  
2       you a short, nonargumentative statement of the  
3       facts. I'm going to read to you -- introduce you  
4       to some folks, ask you some additional questions,  
5       and then we're going to select our jury for our  
6       first case for trial.

7               This part of the process is going to take me  
8       about 15 minutes. So I'm going to ask you to be  
9       at ease and be back here in the courtroom at  
10      20 till 12. Very well. Enjoy your break. I'll  
11      see you in just a little bit.

12              And counsel, join me in chambers, bring your  
13      voir dire and short, nonargumentative statement of  
14      facts.

15              (Whereupon, a brief recess was taken.).

16              THE COURT: Ladies and gentlemen, we are  
17      about to qualify our jury panel for our first case  
18      for trial this week. And in just a moment I'm  
19      going to read to you the title or the caption of  
20      the case. I'm then going to read to you a  
21      nonargumentative statement of the facts of the  
22      case. And then I have a number of questions that  
23      I'm going to be asking of you.

24              Now, ladies and gentlemen, there are a couple  
25      of sort of ground rules that I'm going to go over

## JUROR QUALIFICATION

1 with you even before I begin. The first ground  
2 rule, if you think that you should respond, you  
3 should respond. You're better to respond than not  
4 to respond. In other words, if I ask, do you  
5 know, are you related by blood or marriage or  
6 acquainted with so-and-so and you think that maybe  
7 you are, it's just better to say I think that  
8 maybe I went to school with that person 20 years  
9 ago.

10 You're just better off erring on the side of  
11 I think that I know something or maybe I know  
12 somebody, you will feel better about it. And  
13 trust me to follow-up to determine whether or not  
14 you should serve or not serve. But you will feel  
15 better at the end of this process. When in doubt,  
16 speak up. So that would be a ground rule.

17 Now, there's another ground rule and that has  
18 to do with the definition and it's my definition,  
19 and it's really really general. And because it's  
20 so general it wouldn't be fair for me to do  
21 otherwise than to tell you what I mean when I use  
22 the phrase, "acquainted with." Are you acquainted  
23 with so-and-so.

24 So you're going to hear me ask that a lot, so  
25 I want to define that for you. And the best way

## JUROR QUALIFICATION

1 to define it for you is to tell you what I mean by  
2 it, what am I trying to accomplish. What I'm  
3 trying to accomplish is to find out whether or not  
4 you have any connection with the person that I'm  
5 asking you about. That is what I'm trying to find  
6 out.

7 Now, there will be follow-up questions, and  
8 from those I'll learn a little bit more and then  
9 determine whether or not this is a matter in which  
10 you should serve or not serve.

11 So I want to give you a couple of examples  
12 because when I use that phrase -- and this is how  
13 it'll sound, Are you related by blood or marriage  
14 or acquainted with so-and-so. Now, it may be that  
15 you went to school with so and so 20 years ago,  
16 you haven't anticipated seeing so and so. Haven't  
17 thought about it in 20 years. But when you hear  
18 so and so because that's such an odd name and  
19 there is -- that's the only person that you have  
20 known in your life as so-and-so, you know that you  
21 went to school with so and so 20 years ago.  
22 Believe it or not, my definition of acquaintance  
23 is broad enough to envelop that old of a  
24 relationship. If this applies to you, you should  
25 stand and say, I went to school with so and so

## JUROR QUALIFICATION

1       20 years ago. And I'll say, Do you visit in each  
2       other's houses. And there may or may not be a  
3       follow-up question after that.

4               So when I ask a question, Are you related by  
5       blood or marriage or acquainted with, remember, I  
6       mean a general definition.

7               And another thing that I may bring up, Do you  
8       work with someone. Maybe you work with someone,  
9       maybe you see them across the parking lot, that is  
10      the extent of your relationship. Believe it or  
11      not, that definition will be encompassed in my  
12      definition of acquainted with. There will be  
13      follow-up and a little more than that. And you  
14      may say, yeah, we work at the same location with  
15      1200 other people and we wave at each other.  
16      Maybe I will let him in in traffic, I'll let him  
17      in in traffic or whatever and maybe there will be  
18      follow-up questions.

19              But err on the side of being inclusive,  
20      because my intention of using that phrase,  
21      acquainted with, is to find out whether or not you  
22      have acquaintances with these folksfolks that I'll  
23      be asking you about. So, please, keep this in  
24      mind.

25              Now, ladies and gentlemen, the caption or the



## JUROR QUALIFICATION

1 title of this case is Rebecca Delaney as the  
2 Personal Representative of the Estate of Justin  
3 Nicholas Miller, who is the Plaintiff. Ladies and  
4 gentlemen, Justin Nicholas Miller is deceased and  
5 Rebecca Delaney is the personal representative of  
6 the estate of Justin Nicholas Miller. The  
7 personal representative is the individual who has  
8 brought this action on behalf of the estate of  
9 Justin Miller who is the Plaintiff versus CasePro  
10 Inc. who is the Defendant, the entity against whom  
11 this case has been brought. In our concluding  
12 instruction in this case, I'll give you this  
13 instruction, but I'm going to even tell you now.

14 Ladies and gentlemen, CasePro Inc. obviously  
15 is a corporation. And I'll tell you now that  
16 under our law a corporation is entitled to the  
17 same measure of justice as is a natural  
18 individual. So I mention that to you now at this  
19 time as well. And CasePro Inc. is the Defendant  
20 in this case.

21 Now, ladies and gentlemen, I'm now going to  
22 read to you a short, relatively short,  
23 nonargumentative facts of this case. My question,  
24 ladies and gentlemen, on the other side of this is  
25 going to be, Have you heard or think you may have

## JUROR QUALIFICATION

1       heard or do you know or think you may know  
2       anything about these allegations. That will be on  
3       the other side of my reading to you this brief  
4       statement of facts.

5               Ladies and gentlemen, this case arises out of  
6       a series of events that occurred on February the  
7       24th, 2012 at the Naval Hospital in Beaufort. On  
8       that day Calvin Hunt and his escort VA  
9       Representative Edward Ray presented at the Naval  
10      Hospital General Medicine Clinic for a refill of  
11      Hunt's medications. During an interview with a  
12      nurse in that clinic Mr. Hunt indicated that he  
13      had thoughts of hurting himself. He along with  
14      Mr. Ray was taken to the emergency department at  
15      the Naval Hospital for further evaluation.

16             Over a period of approximately two hours  
17      Mr. Hunt was evaluated and/or observed in the  
18      emergency department by triage nurse Janice  
19      McDonald, emergency room doctor Christian Jansen,  
20      treatment nurse Joe McDonald. Additionally,  
21      Calvin Hunt was observed and/or evaluated by  
22      psychiatric technician Manning. Psychiatrist  
23      Dr. Handelman was also consulted about Mr. Hunt.  
24      It was decided that Mr. Hunt needed to be admitted  
25      to the mental health ward of Beaufort Memorial

## JUROR QUALIFICATION

1 Hospital for additional evaluation, and steps were  
2 being taken to arrange for that transfer.

3 During that time Mr. Hunt and Mr. Ray  
4 approached Nurse Joe McDonald, and Mr. Ray  
5 inquired about stepping outside to get some air to  
6 which Mr. McDonald assented. While outside with  
7 Mr. Ray, Mr. Hunt suddenly ran away from Mr. Ray,  
8 removed some items of clothing and ran out of the  
9 Navy base past the front security gate. Mr. Hunt  
10 then stole a fire engine that was parked at a  
11 nearby apartment complex, drove down Ribaut Road  
12 causing multiple motor vehicle accidents and  
13 eventually struck and killed pedestrian Justin  
14 Nicholas Miller.

15 Rebecca Delaney as the personal  
16 representative of the estate of Justin Nicholas  
17 Miller, Plaintiff, brought this Wrongful Death and  
18 Survival Act lawsuit against CasePro Inc. seeking  
19 to recover monetary damages for her son Justin  
20 Miller's injuries and death. Plaintiff alleges  
21 that emergency room doctor, Dr. Christian Jansen,  
22 Registered Nurse Janice McDonald and Registered  
23 Nurse Joseph McDonald were negligent in their  
24 involvement and interactions with Mr. Hunt.  
25 Plaintiff contends that those individuals were

## JUROR QUALIFICATION

1 employees of Defendant, CasePro Inc., and that  
2 Defendant CasePro Inc. is negligent for their  
3 actions in a number of ways.

4 Defendant CasePro Inc. denies all allegations  
5 of negligence and contends that the Department of  
6 Navy was the true employer of the doctor and  
7 nurses by having sole control over the manner and  
8 method of activity of the ER or emergency room  
9 doctors and nurses in the emergency department,  
10 and that Defendant CasePro Inc. only served as a  
11 staffing agency of and for the Department of the  
12 Navy.

13 Ladies and gentlemen, do any of you know or  
14 think you may know or have you heard or think you  
15 may have heard, to include today, anything about  
16 these allegations? If so, please stand.

17 THE BAILIFF: Juror 232, Your Honor.

18 THE COURT: Good morning.

19 JUROR: Good morning. When did this happen,  
20 two years ago?

21 THE COURT: February the 24th, 2012.

22 JUROR: I lived in the Arden, North Carolina  
23 then.

24 THE COURT: All right.

25 JUROR: And my brother, he lives out here on

## JUROR QUALIFICATION

1 Saint Helena, and I think it came over the news or  
2 something.

3 THE COURT: Yes.

4 JUROR: And I just called him. I says, do  
5 you know these people and he says, no. We kind  
6 of, okay, and that was about it.

7 THE COURT: All right. Have you heard  
8 anything about -- anything else about it since  
9 that time?

10 JUROR: No. We hadn't even discussed it  
11 or -- no. In fact, until it was brought up here  
12 today I thought I vaguely remember something about  
13 that.

14 THE COURT: Well, that's the reason that I do  
15 it is to see if it rings any bells. And have you  
16 had any additional conversations with your  
17 brother?

18 JUROR: No.

19 THE COURT: No?

20 JUROR: No.

21 THE COURT: So you heard something about it.  
22 Called your brother. Do you know anyone --

23 JUROR: Yeah, because he's -- he lives here.

24 THE COURT: Because he lives here, very well.

25 JUROR: And he used to be chief security out

## JUROR QUALIFICATION

1 on Fripp and a retired Marine and, you know, just  
2 curiosity.

3 THE COURT: Sure.

4 JUROR: When he ran out of -- when y'all  
5 turned off the water, I asked him, do you want me  
6 to send you some water.

7 THE COURT: And as a result of that  
8 knowledge, have you formed any opinions regarding  
9 this case?

10 JUROR: No.

11 THE COURT: And do you believe if you were  
12 selected to serve as a juror that you could be  
13 completely fair and impartial both to the estate  
14 as well as to CasePro?

15 JUROR: Definitely, yes.

16 THE COURT: And can you set that news article  
17 or news story that you heard, can you set that  
18 aside and make up your mind based solely on what  
19 you hear in court while court is in session?

20 JUROR: Sure.

21 THE COURT: Very well. You can stay with us.

22 JUROR: Okay.

23 THE COURT: And I'll ask you this, not to  
24 discuss having heard that earlier story with your  
25 fellow jurors. Thank you.

## JUROR QUALIFICATION

1 THE BAILIFF: Juror 216, Your Honor.

2 THE COURT: Hello. Yes?

3 JUROR: I remember reading the story,  
4 following the story. My three children are in the  
5 military, two are Marines, and I thought he might  
6 have been deployed with one of my sons in Iraq.

7 THE COURT: Okay. All right. That who was  
8 deployed with your son in Iraq?

9 JUROR: The gentleman that drove that truck.  
10 He may have been deployed with my son in Iraq. My  
11 son did two tours in Iraq.

12 THE COURT: Gotcha. Gotcha. Very well. And  
13 have you had conversations with your family or  
14 your sons about this particular --

15 JUROR: Back in 2012?

16 THE COURT: Yeah. Yes, back when it  
17 occurred.

18 JUROR: Yeah.

19 THE COURT: Okay. And did your son think  
20 that he had served with this particular gentleman?

21 JUROR: He said that the name sounded  
22 familiar, but it -- he wasn't, probably, in his  
23 immediate unit.

24 THE COURT: Okay.

25 JUROR: Because he did two tours.

## JUROR QUALIFICATION

1           THE COURT: Gotcha. Gotcha. And I'm  
2           noticing a little bit of an emotional reaction.  
3           Tell me about that.

4           JUROR: My son suffers from PTSD from his  
5           deployments. So it's really hard when you see  
6           former Marines that have actions that aren't  
7           fairly normal.

8           THE COURT: I gotcha.

9           JUROR: And it's very emotional for me,  
10          because my son struggles with that everyday.

11          THE COURT: Gotcha. Gotcha. And so would  
12          this be a case for you that would be very  
13          difficult for you to --

14          JUROR: Yes.

15          THE COURT: Very well. Thank you for your  
16          candor. Now --

17          JUROR: I'm sorry, I'm just being honest.

18          THE COURT: That's perfect. That's  
19          absolutely perfect. I apologize too, for causing  
20          you to get upset for anything in this world. And  
21          I'm so grateful -- I'm so humbled and grateful for  
22          your candor. And I am sorry to take you to a  
23          place that I wouldn't ever intentionally do for  
24          anything.

25          JUROR: That's okay.



## JUROR QUALIFICATION

1 THE COURT: Thank you so --

2 JUROR: I'm just very proud of my children  
3 and their military service.

4 THE COURT: Well, you should be. You  
5 absolutely should be. And we are all grateful for  
6 all that they have given. What -- you know what,  
7 we wouldn't be in this courtroom. We wouldn't  
8 have the opportunity to have a trial even but for  
9 your children. So I thank you for their service,  
10 and I wish -- wish them well.

11 JUROR: Thank you.

12 THE COURT: Now, what I need you to do for  
13 me. And it's -- I need you to go and take your  
14 seat and then when you are ready, you can ease  
15 out, if you wish. Because this is going to take a  
16 little while as you can imagine. And I'll just  
17 give you --

18 JUROR: Take a seat and then just wait for a  
19 little bit?

20 THE COURT: I think so. Unless you want to  
21 escape sooner, it's up to you.

22 JUROR: No, I'll wait.

23 THE COURT: Thank you so much. She's  
24 excused.

25 THE BAILIFF: Juror 60, Your Honor.

## JUROR QUALIFICATION

1 THE COURT: Hello. Yes, sir.

2 JUROR: So I saw the case on the court  
3 roster, just the -- on the Beaufort County court  
4 web site. And then yesterday I saw the headlines  
5 about jury selection for the case.

6 THE COURT: Right.

7 JUROR: I didn't click into the article. But  
8 I didn't know if that was -- if I needed to  
9 approach.

10 THE COURT: Perfect, that was perfect. And  
11 so you clicked on the roster. Did you look at  
12 anything beyond the roster about the case?

13 JUROR: No, nothing that I would have  
14 understood.

15 THE COURT: Well, let me ask this because I  
16 don't know whether Beaufort has access to  
17 documents, some do.

18 JUROR: No, no documents were accessible.

19 THE COURT: All right. So all you could see  
20 was the heading of the case?

21 JUROR: Correct.

22 THE COURT: Okay. And then you saw the  
23 newspaper article?

24 JUROR: Only the -- it was online, only the  
25 title. Although, I didn't click into it.

## JUROR QUALIFICATION

1 THE COURT: You didn't read the article?

2 JUROR: No.

3 THE COURT: Had you seen any articles prior  
4 to yesterday?

5 JUROR: Maybe when the incident happened in  
6 2012, but -- although it's hard to say, it was  
7 three and a half years ago.

8 THE COURT: Exactly. Or the television, I  
9 gather it was probably online and on the  
10 television as well?

11 JUROR: Yes.

12 THE COURT: Did you -- is it fair to assume  
13 that you probably heard something about it in  
14 2012?

15 JUROR: Yes.

16 THE COURT: Okay. And other than being  
17 around it and having heard it, having it -- did  
18 you have any other involvement with it? Did you  
19 discuss it with anyone that knew anything about  
20 it? Did anyone know anyone that was associated  
21 with these events?

22 JUROR: No, Your Honor.

23 THE COURT: Okay. And given what you know,  
24 have you at this moment formed any opinions about  
25 this particular matter?

## JUROR QUALIFICATION

1 JUROR: No, Your Honor.

2 THE COURT: Okay. And do you believe that  
3 you can set aside having seen the roster, having  
4 seen the headline, and what, if any, articles or  
5 news or what you may have seen on the computer,  
6 can you set all of that information aside and make  
7 up your mind based solely on what you hear in  
8 court while court is in session?

9 JUROR: Yes, Your Honor.

10 THE COURT: Okay. And from what I understand  
11 is when you clicked on -- did you click on the  
12 case?

13 JUROR: Yes.

14 THE COURT: It's a public document. It is  
15 perfectly fine to do that. There's nothing wrong  
16 with that at all. And so you clicked on the  
17 document --

18 JUROR: Yeah.

19 THE COURT: -- and do you remember the  
20 heading of any of the documents that you saw?

21 JUROR: No. I mean, the only thing I saw --  
22 I can recall at all clearly is the -- it's a  
23 wrongful death suit and it's a -- and the  
24 Plaintiff and Defendant's names.

25 THE COURT: Okay. Any other documents that

## JUROR QUALIFICATION

1       you -- because I don't know, because I haven't  
2       clicked on anything. But do you remember the name  
3       of any other documents?

4             JUROR: No, they're -- I didn't -- I don't  
5       think that there were any documents that are  
6       clickable.

7             THE COURT: Right. Gotcha. Gotcha  
8       completely. Very well. All right. Now, let me  
9       ask you this question. Tell me -- I was not  
10      present for role call, How are you employed?

11            JUROR: I am employed at -- in Bluffton in a  
12      health care company called eviCore Healthcare.

13            THE COURT: And what do you do for them?

14            JUROR: Claims system and configuration. I  
15      set up a claims system so I --

16            THE COURT: IT -- you're an IT person?  
17      You're a wonk?

18            JUROR: Basically, yeah.

19            THE COURT: Now, let me ask a question. If  
20      you were to be selected to serve on a jury in this  
21      case, could you keep your fingers away from the  
22      computer and your iPhone and any other technology  
23      in doing any kind of research about this  
24      particular matter?

25            JUROR: Yes, I can.

## JUROR QUALIFICATION

1 THE COURT: Okay. That would be an  
2 instruction. And I worry about my wonks a little  
3 bit. Okay. You could follow that instruction, no  
4 wonking?

5 JUROR: Right.

6 THE COURT: Wonderful. Okay. Please stay  
7 with us and thank you so much.

8 THE BAILIFF: Juror 139, Your Honor.

9 JUROR: Good afternoon, Your Honor, John  
10 Giljam.

11 THE COURT: How are you?

12 JUROR: Good.

13 THE COURT: Okay. I need enough volume for  
14 the court reporter and everyone else can gather  
15 around, because I want to keep your responses  
16 right up here rather than with the jury panel.

17 JUROR: I understand.

18 THE COURT: Tell me what you know.

19 JUROR: Basically all I remember is back when  
20 the incident happened, it was in the news and  
21 things like that. I don't have any other  
22 knowledge of the people or things like that. But  
23 back in my history, I have built/manufactured fire  
24 trucks and things like that, so I paid attention  
25 as far as to that point of the story. Factually I

## JUROR QUALIFICATION

1 know nothing else about it.

2 THE COURT: Gotcha. Gotcha. When did you  
3 build fire trucks?

4 JUROR: I've been in fire trucks, fire  
5 apparatus and custom manufacturing of vehicles all  
6 my life. So I grew up in doing that in a welding  
7 fabrication shop with my father.

8 THE COURT: How interesting. Where?

9 JUROR: So I've been in heavy equipment --  
10 Upstate New York.

11 THE COURT: Oh, how interesting.

12 JUROR: And now I manufacture amphibious  
13 vehicles, you know, here in Ridgeland.

14 THE COURT: Well, oh, boy, are you needed  
15 right now.

16 JUROR: I wish that I had some of our  
17 equipment. I have none of our -- everything is in  
18 customers' possession, so very frustrating for us.

19 THE COURT: I can only imagine.

20 JUROR: Yes.

21 THE COURT: Just so I am clear. You remember  
22 hearing about it when it occurred in 2012?

23 JUROR: Back -- that is correct. Back at the  
24 time I remember hearing about it. And then I saw  
25 on The Island Packet it came up as -- or that it

## JUROR QUALIFICATION

1       was going -- this headline was coming up for  
2       trial, but I did not click on it. Because I  
3       already had a jury summons, and it's like I'm  
4       coming, I didn't even open the story.

5               THE COURT: Thank you for that. And do you  
6       believe -- well, let me ask this preliminary  
7       question. Have you formed any opinions regarding  
8       this matter, at all?

9               JUROR: None, whatsoever.

10              THE COURT: Okay. And if you were selected  
11       to serve on the jury, do you believe that the  
12       information that you have received would in any  
13       way impact your ability to be completely fair and  
14       impartial both to the Plaintiff as well as to the  
15       Defense?

16              JUROR: No, that would not impact. I don't  
17       have the facts.

18              THE COURT: And can you set that information  
19       that you have aside and make up your mind based  
20       solely only on what you hear in court while court  
21       is in session?

22              JUROR: Yes, ma'am.

23              THE COURT: Thank you so much. Please stay  
24       with us.

25              THE BAILIFF: Juror 66.



## JUROR QUALIFICATION

1 THE COURT: Yes, sir?

2 JUROR: I'm employed by the fire department  
3 involved, so.

4 THE COURT: Okay. Tell me what you know.  
5 Was this your fire department that had the truck?

6 JUROR: Yes, ma'am.

7 THE COURT: Okay. And were you employed by  
8 the fire department in 2012?

9 JUROR: No, I've been employed since  
10 July 2013.

11 THE COURT: Okay. So, roughly, a year after  
12 these events occurred?

13 JUROR: Yes.

14 THE COURT: That's okay. All right. And?

15 JUROR: And I've heard all of the firsthand  
16 accounts and like stories of people that were  
17 there and whatnot so --

18 THE COURT: I'm going to ask you to sit this  
19 one out.

20 JUROR: Okay.

21 THE COURT: And have you had -- as you have  
22 been here this morning, have you discussed what  
23 you know with anyone on the jury panel?

24 JUROR: No.

25 THE COURT: Okay. You haven't?

## JUROR QUALIFICATION

1 JUROR: No, ma'am.

2 THE COURT: Okay. You haven't discussed it  
3 with anyone?

4 JUROR: I didn't talk to nobody.

5 THE COURT: Gotcha. Gotcha. Okay, very  
6 well. Well, I'm going to ask you to continue in  
7 that mode as you leave us today. And I want to  
8 thank you for being here today. All right?

9 JUROR: Yes, ma'am.

10 THE COURT: Excused.

11 THE BAILIFF: Juror 208, Your Honor.

12 THE COURT: Okay. Good morning. I need  
13 enough volume for my court reporter to hear you,  
14 but I would like the jury panel not to hear you.

15 JUROR: Okay.

16 THE COURT: Tell me what you know.

17 JUROR: Basically I don't know that much. I  
18 remember it being in the newspaper and on the news  
19 and people talking about how tragic it was and  
20 that's about it.

21 THE COURT: All right. And are you talking  
22 about when the -- back at the time?

23 JUROR: Yes.

24 THE COURT: 2012?

25 JUROR: Right.

## JUROR QUALIFICATION

1 THE COURT: Okay. And did you form any  
2 opinions back in 2012 about these events?

3 JUROR: About who was responsible and all of  
4 that sort of -- not really.

5 THE COURT: Okay. And have you over time  
6 formed any opinions about this matter?

7 JUROR: Really have not discussed it.

8 THE COURT: Okay. All right. And did you  
9 discuss it a little bit? A lot?

10 JUROR: I think at the time it was big news  
11 and it was discussed quite a bit.

12 THE COURT: Quite a bit. Okay. All right.  
13 And as -- because, obviously, I'm not from here.  
14 I know nothing. And so when -- were people  
15 inclined to have a position? Was there like this  
16 camp that thought this and then this camp that  
17 thought that?

18 JUROR: In general, I think that what I  
19 remember, okay, is that everybody just thought it  
20 was a very tragic thing and how could that  
21 possibly happen and that sort of thing going on.

22 THE COURT: Gotcha. Gotcha. And so at that  
23 time what, if any, opinions did you form at  
24 that -- in 2012 about these events?

25 JUROR: I don't know as I formed any

## JUROR QUALIFICATION

1       opinions.

2               THE COURT:   Okay.   Other than it was a tragic  
3       thing?

4               JUROR:   It was a tragic thing and how could  
5       that happen.

6               THE COURT:   And how could that happen.   Okay.  
7       I understand.

8               Now, let me ask this question of you.   Have  
9       you heard anything about it over the last several  
10      days?

11              JUROR:   (Nods in the negative.)

12              THE COURT:   No?   Have you read anything about  
13      this matter over the last several days?

14              JUROR:   No.   Has it been in the paper?   I  
15      missed it.

16              THE COURT:   Again, I don't know, I simply  
17      ask.

18              JUROR:   Okay.

19              THE COURT:   Now, if you were to be a juror in  
20      this case --

21              JUROR:   Yes.

22              THE COURT:   -- it would be absolutely  
23      essential that you make up your mind based solely,  
24      based only on what you were to hear in court while  
25      court is in session.

## JUROR QUALIFICATION

1 JUROR: Right.

2 THE COURT: And it would be important that  
3 you forego those conversations, what you knew,  
4 what you heard at the time of these events, 2012,  
5 and that you would base your deliberation or  
6 decision based only, solely, on what you hear in  
7 court while court is in session. Do you  
8 understand that?

9 JUROR: Yes.

10 THE COURT: Do you think that would present a  
11 problem for you?

12 JUROR: No.

13 THE COURT: Do you believe that you could  
14 make up your mind based solely on what you hear in  
15 court while court is in session?

16 JUROR: Yes.

17 THE COURT: Do you think that you would have  
18 any difficulty in following my instruction not to  
19 do any Columbo, no research on this matter?

20 JUROR: True. No, I wouldn't.

21 THE COURT: Very well. Thank you. Please  
22 stay with us.

23 Next?

24 THE BAILIFF: Juror 300, Your Honor.

25 JUROR: Hello.

## JUROR QUALIFICATION

1 THE COURT: Hello, hello. Yes, ma'am?

2 JUROR: Okay. I just know, briefly, about  
3 the case. My husband is a Port Royal police  
4 officer, and the fire truck was stolen in that  
5 jurisdiction. So I do know that. I do know the  
6 little boy was killed. I do not personally know  
7 Calvin whatever his name is.

8 THE COURT: Okay. All right.

9 JUROR: So I do know police officers were  
10 injured so -- yeah.

11 THE COURT: Okay. And was your husband  
12 involved with any of the investigation or --

13 JUROR: I can't remember that far back. I  
14 don't know if he was on duty that day. But I do  
15 know -- and I just recently read about it online,  
16 but I didn't know that it was today.

17 THE COURT: Gotcha. Gotcha. Gotcha. And  
18 was your husband employed by Port Royal at the  
19 time?

20 JUROR: Yes, he's still employed there, yeah.

21 THE COURT: And do you know if he had any  
22 conversations -- if he wasn't involved, did he  
23 have conversations with people who were involved?

24 JUROR: He -- yes.

25 THE COURT: And would he have come home and

## JUROR QUALIFICATION

1 say, Honey, let me tell you what happened today?

2 JUROR: Yes, we do talk.

3 THE COURT: Yeah. You do have a  
4 relationship. You do speak with one another.

5 JUROR: Yes.

6 THE COURT: Very well. I think what I'm  
7 going to do --

8 JUROR: But this will be the second time that  
9 you've moved me, and it's so hard to keep moving  
10 me because I know the child's age is 7 --

11 THE COURT: I'm not moving you.

12 JUROR: Oh, okay.

13 THE COURT: You're not getting moved. You've  
14 been here, right.

15 JUROR: Okay.

16 THE COURT: Yeah, you're here, right?

17 JUROR: Because my daughter is --

18 THE COURT: You're here.

19 JUROR: Okay. So am I staying?

20 THE COURT: Nobody's getting transferred.

21 JUROR: Okay. Good.

22 THE COURT: But I am going to excuse you.  
23 But you're here, you've done your service.

24 JUROR: Oh, okay. So I'm good for three  
25 years, I guess?

## JUROR QUALIFICATION

1. THE COURT: I don't know. Because if I'm  
2 back, I might be able to persuade you to serve,  
3 you never know.

4 JUROR: Bring my child with me?

5 THE COURT: Sure. We'll have a good time.  
6 I'll babysit. And I'll ask you, you'll be so kind  
7 not to discuss this matter with anyone as you exit  
8 and leave us?

9 JUROR: Yes. Thank you.

10 THE COURT: Y'all get a number?

11 THE CLERK: 300.

12 THE BAILIFF: Juror 213, Your Honor.

13 JUROR: Good morning.

14 THE COURT: Hello, good morning. I need just  
15 enough volume for my court reporter to hear you.

16 JUROR: Okay.

17 THE COURT: And I'm not interested in the  
18 jury panel hearing what you have to tell me.

19 JUROR: Okay. Fair enough. I hope I didn't  
20 misunderstand you, but --

21 THE COURT: You didn't.

22 JUROR: -- only knowledge I know about this  
23 is from The Island Packet article a couple days  
24 ago, and that's it. I don't know anything else  
25 about it.



## JUROR QUALIFICATION

1 THE COURT: Did you read the article?

2 JUROR: I did.

3 THE COURT: Tell me what you remember from  
4 having read the article.

5 JUROR: I just remember --

6 THE COURT: This is like a test from school.  
7 What do you remember from reading it?

8 JUROR: I remember the -- about the person  
9 escaping in the fire truck and that there was a  
10 death involved.

11 THE COURT: I gotcha. When you read the  
12 article, did you form any opinion?

13 JUROR: I did not.

14 THE COURT: Okay. And as you're here today,  
15 do you have any preconceived -- do you have an  
16 opinion?

17 JUROR: I do not.

18 THE COURT: Okay. And do you believe that  
19 you could set what you have read completely  
20 aside --

21 JUROR: Yes, ma'am.

22 THE COURT: -- and you could, if you would be  
23 a juror in this case, make up your mind based  
24 solely, I mean based only, on what you hear in  
25 court while court is in session?

## JUROR QUALIFICATION

1 JUROR: Yes, ma'am.

2 THE COURT: Unaffected by what you have read?

3 JUROR: Correct.

4 THE COURT: Very well, stay with us sir.

5 THE BAILIFF: Juror 50, Your Honor.

6 THE COURT: Hi. Yes, tell me what you know.

7 JUROR: I own a fairly large flower shop in  
8 town, and we're -- often we are privy to what  
9 friends and families' opinions are. Now, I  
10 don't -- it's been so long ago and we deal with  
11 the funeral homes everyday, so I don't really  
12 remember anything. But I wanted to put it out  
13 there that they often tell us stuff.

14 THE COURT: Exactly. And do you remember any  
15 stuff --

16 JUROR: No.

17 THE COURT: -- that you were told?

18 JUROR: I don't. I just remember it being  
19 that the community, the outpouring of support.

20 THE COURT: Gotcha.

21 JUROR: I mean, we deal with it everyday, but  
22 it needed to be out there.

23 THE COURT: That's right. Exactly. I need  
24 to know that, and so I'm grateful that you're  
25 honoring my request. You own a flower shop and

## JUROR QUALIFICATION

1       it's part of your business -- you know that as  
2       being part of your business. All right. You  
3       remember it because of that. And that back during  
4       the time of these events, did you form any  
5       opinions about these matters?

6               JUROR: No.

7               THE COURT: Okay.

8               JUROR: I just sold flowers. I mean,  
9       honestly, that's what I do.

10              THE COURT: I understand. I absolutely  
11       understand. And if you were to be selected to  
12       serve on this jury, do you believe that you could  
13       make up your mind based solely on what you hear in  
14       court while court is in session?

15              JUROR: I could, but I do have an opinion  
16       that I need to put out there. I do not have a  
17       high opinion of Dr. Jansen. I've been going to  
18       the Naval Hospital for many years, and I do not  
19       have a high opinion of him.

20              THE COURT: Okay. All right. And is that  
21       the doctor that I mentioned?

22              JUROR: Yes.

23              THE COURT: Very well. Thank you for sharing  
24       that with me. Given that, given that opinion,  
25       what I'm going to do, I'm going to excuse you now.

## JUROR QUALIFICATION

1 I want you to hear how grateful I am for your  
2 candor. I mean, I don't know anybody. I just got  
3 here. So I really do rely and I've also been so  
4 grateful for juror's representations, so I  
5 appreciate that. I would ask you to do this for  
6 me, though, is not to mention your opinion of him  
7 to anyone as you exit..

8 JUROR: Thank you, I will not.

9 THE COURT: And have a wonderful day.

10 JUROR: Thank you.

11 THE BAILIFF: Juror 367, Your Honor.

12 THE COURT: Okay. Hi. And I wasn't paying  
13 attention to --

14 THE CLERK: 367.

15 THE COURT: 367, yes, ma'am.

16 I just need enough volume for my court  
17 reporter, and I would like for the jury panel not  
18 to be able to hear you.

19 JUROR: Okay. I did follow the story from  
20 the beginning, and yesterday I opened up the paper  
21 and there it was. So I'm like, yep, yes, that's  
22 where I'm going to.

23 THE COURT: Okay, gotcha. And have you  
24 formed any opinions? Did you form any opinions?

25 JUROR: Yes, I actually have.

## JUROR QUALIFICATION

1           THE COURT: Okay. Very well. And do you  
2 believe that you could completely do away with  
3 those opinions?

4           JUROR: No.

5           THE COURT: No?

6           JUROR: Nope.

7           THE COURT: All right. I'm going to ask for  
8 you to sit this one out for me. And I'm going  
9 to -- have you discussed your opinions with any of  
10 your fellow jurors?

11          JUROR: No.

12          THE COURT: Have you discussed with them  
13 about this matter at all?

14          JUROR: I just mentioned to one of them that  
15 I thought that this was the case.

16          THE COURT: But other than saying, I think  
17 this is the case, did you say anything beyond  
18 that?

19          JUROR: No.

20          THE COURT: No? Okay. Not -- nothing like,  
21 and, boy, I followed that and --

22          JUROR: No.

23          THE COURT: No other comments?

24          JUROR: No, I just said I saw it in the paper  
25 yesterday and figured that's what this was about.

## JUROR QUALIFICATION

1 THE COURT: Gotcha. And nothing beyond that?

2 JUROR: No.

3 THE COURT: Very well. Thank you so much.

4 THE BAILIFF: Juror 26, Your Honor.

5 THE COURT: All right. Hi. Good morning. I  
6 jut need enough volume for my court reporter to  
7 hear you and not the jury panel.

8 JUROR: I just wanted to let you know that I  
9 did read about it in the paper, but I was not  
10 aware of any lawsuit.

11 THE COURT: Okay.

12 JUROR: My husband is a retired firefighter,  
13 so it was discussed but more in terms of the fact  
14 that the gentleman stole the fire truck, not in  
15 any other way.

16 THE COURT: I understand. When you read the  
17 article, was it at the time of these events?

18 JUROR: Uh-huh.

19 THE COURT: I gotcha. So back in 2012 you  
20 read article or articles?

21 THE WITNESS: Correct.

22 THE COURT: Did you form any opinions about  
23 anything back in 2012?

24 JUROR: Well, we discussed the fact that this  
25 gentleman stole a fire truck. So, yeah, I had an

## JUROR QUALIFICATION

1 opinion about that.

2 THE COURT: Okay. And what was the opinion?

3 JUROR: That he shouldn't have done it.

4 THE COURT: Shouldn't have stole a fire  
5 truck?

6 JUROR: Yeah.

7 THE COURT: Gotcha. All right. Anything  
8 else?

9 JUROR: No, that's it.

10 THE COURT: Very well. Now, have you read  
11 anything about this particular matter since the  
12 time of these events?

13 JUROR: I don't think so.

14 THE COURT: Okay.

15 JUROR: But I just -- I did remember it when  
16 you brought it up, and felt I needed to let you  
17 know.

18 THE COURT: Sure. And do you believe that  
19 you can set aside -- well, let me begin by saying  
20 this. When I just read you the statement of the  
21 case -- and I'm going to refer back to it for my  
22 own purposes. If you will recall, in the  
23 statement of the facts I said that Mr. Hunt then  
24 stole a fire truck. Stole means -- we'll all  
25 agree that stealing is not a good thing?

## JUROR QUALIFICATION

1 JUROR: Correct.

2 THE COURT: So the fact that you had an  
3 opinion that a person had stolen a fire truck and  
4 that was not a good thing to steal a fire truck.  
5 That does not -- that in and of itself, that  
6 opinion, does not concern me.

7 JUROR: Okay.

8 THE COURT: My question is whether or not you  
9 have any opinions beyond that?

10 JUROR: No.

11 THE COURT: Okay. All right. And so do you  
12 believe that you could listen to the evidence in  
13 this courtroom and make up your mind based solely  
14 on what you hear in court while court is in  
15 session?

16 JUROR: Yes.

17 THE COURT: Very well. And do you believe  
18 that you can -- I don't -- I simply have no  
19 information about whether or not there will be any  
20 particular unique information about fire trucks as  
21 opposed to other kinds of vehicles. But if there  
22 was, I will give the jurors an instruction not to  
23 discuss this matter with anyone.

24 JUROR: Right.

25 THE COURT: Do you believe if you had a



## JUROR QUALIFICATION

1 question about a fire truck, that you could  
2 refrain from asking your firefighting husband that  
3 question?

4 JUROR: Yes.

5 THE COURT: Thank you so much. Please stay  
6 with us.

7 JUROR: Okay. Thank you.

8 THE COURT: Ladies and gentlemen, can you  
9 hear me if I stay here? Even those on the back  
10 row? If my voice drops, somebody just raise your  
11 hand and let me know. Very well.

12 Ladies and gentlemen, please allow me to  
13 introduce you to Rebecca Delaney. If you'd please  
14 just stand and face our jury panel. Thank you.  
15 This is Rebecca Delaney. And turn -- and  
16 Ms. Delaney, the reason that I ask it is so much  
17 easier to put a name with a face than just the  
18 name. And you may be seated, and thank you.

19 Ladies and gentlemen, are you related by  
20 blood or marriage or acquainted with Rebecca  
21 Delaney? If so, please stand at this time.

22 (No response.)

23 And I find no one standing.

24 Ladies and gentlemen, please allow me to  
25 introduce you to counsel, lawyers, the lawyers who

## JUROR QUALIFICATION

1 are representing Ms. Delaney. I will begin with  
2 Mr. David Hoyle and he'll introduce the members of  
3 his -- the lawyers who are present with him and  
4 their firms. Thank you Mr. Hoyle.

5 MR. HOYLE: Good afternoon. I'm David Hoyle.  
6 I'm an attorney with the Motley Rice firm in Mount  
7 Pleasant, South Carolina. I'm joined at counsel  
8 table by Crystal Castleberry with the Castleberry  
9 Law Firm from Morgantown, West Virginia. She  
10 referred this case to Motley Rice. She also has  
11 an office and residence on Hilton Head and is a  
12 licensed member of the South Carolina Bar. I'm  
13 joined by my colleague, William Swett and Temitope  
14 Leyimu of Motley Rice. And and we're assisted  
15 here at the table by my wonderful paralegal,  
16 Jeannie Staley (phonetic). And our pathology  
17 consultant John Mills.

18 THE COURT: Thank you so very much.

19 MR. HOYLE: Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen, are you  
21 related by blood or marriage or acquainted or have  
22 you or any member of your immediate family, to  
23 your knowledge, ever been represented by these  
24 lawyers or their firms? If so, please stand at  
25 this time.

## JUROR QUALIFICATION

1 Yes, sir. Tell me your number.

2 JUROR: 178.

3 THE COURT: Tell me who you know.

4 JUROR: Motley Rice.

5 THE COURT: Come on forward. And your number  
6 again?

7 JUROR: 178.

8 THE COURT: I just need enough volume for my  
9 court reporter, and not the jury panel.

10 JUROR: Oh, I'm sorry.

11 THE COURT: That's not a problem.

12 JUROR: I had an asbestos-related issue from  
13 work and Motley Rice is representing me in a case.

14 THE COURT: All right. How long ago?

15 JUROR: They're currently. Still are. This  
16 has been going on two or three years.

17 THE COURT: Gotcha. I'm going to ask you to  
18 sit this one out. I don't think it's fair to put  
19 you in that position, I'm not going to do that.  
20 Thank you for all of your patience today. I  
21 really do appreciate it.

22 JUROR: All right. No problem.

23 THE COURT: And have a good weekend. Thank  
24 you, sir.

25 He is excused.

## JUROR QUALIFICATION

1 Counsel, let me see you just a second?

2 (Off-the-record discussion held.)

3 THE COURT: Now, ladies and gentlemen, please  
4 allow me to introduce you to Mr. Mike McCabe. And  
5 this is Mr. McCabe, he will stand and face our  
6 jury panel. He is here on behalf of CasePro Inc.  
7 Thank you, Mr. McCabe, you may be seated.

8 Ladies and gentlemen, first of all,  
9 individually, are you related by blood or marriage  
10 or acquainted with Mr. McCabe? If so, please  
11 stand at this time.

12 (No response.)

13 And I find no one standing.

14 Ladies and gentlemen, have you or any member  
15 of your immediate family, to your knowledge, now  
16 work for or ever in the past have worked for  
17 CasePro Inc.? If so, please stand at this time.

18 (No response.)

19 And I find no one standing.

20 Ladies and gentlemen, have you or any member  
21 of your immediate family ever done any kind of  
22 business or have any sort of business or other  
23 relationship with CasePro Inc.? If so, please  
24 stand at this time.

25 (No response.)



## JUROR QUALIFICATION

1           And I find no one standing. Very well.

2           Now, ladies and gentlemen, in just a moment I  
3       am going to be reading to you a list of potential  
4       witnesses. My question as to each and every one  
5       of these witnesses is, are you related by blood or  
6       marriage or acquainted with any of these  
7       individuals. And I don't want anybody to be shy.  
8       If you need me to go back through the list, I'm  
9       happy to do that.

10          And if these folks, if you happen to be in  
11       the courtroom, I'm going to ask you to please  
12       stand when your name is called, because it is so  
13       much easier to put a name with the face than just  
14       the name alone. So I would like our jurors to  
15       have the benefit of having -- being able to see  
16       and put the name with the face.

17          All right. Angelina Brannon. Tracie  
18       Brasswell. Donovan Delaney. Jennifer Earl.  
19       Billy Joe Eckart. Beverly Hendelman. Anthony  
20       Lupinetti. Arthur Manning. William Marck. Craig  
21       Martin. Deb -- oh, is it Moot? I know that I've  
22       done that miserably and I apologize. Meaut. Deb  
23       Meaut. Nicholas Merced. Chris Miller. Karen  
24       Pope. San.-- or Saundra Smith. Ricardo Williams.  
25       Edward Allen. Sammy Negron. Erik Oberg -- oh,

## JUROR QUALIFICATION

1       very well. I'm old, I'm going to go through the  
2       whole list. I'm afraid I'll get confused  
3       otherwise. J.L. Perry. Perry Woodside.

4               Are you related by blood or marriage or  
5       acquainted with any of those individuals?

6               Yes, ma'am, tell me who you know.

7               JUROR: Sammy Negron was with the fire  
8       department when this happened.

9               THE COURT: Now, here's what -- here's what I  
10      want you to let me do. I want you to keep your  
11      answers very short and just answer what I'm  
12      asking. I have a reason for doing that.

13              JUROR: Okay.

14              THE COURT: Very well. Now, do you visit in  
15      each other's homes?

16              JUROR: No.

17              THE COURT: All right. Would you describe  
18      your relationship as one that is personal or  
19      professional?

20              JUROR: Professional.

21              THE COURT: All right. And do you believe  
22      that your relationship, your professional  
23      relationship, with the gentleman might or could in  
24      any regard, in any regard, interfere with your  
25      ability to be completely fair and impartial both

## JUROR QUALIFICATION

1 to the Plaintiff and to the Defendant? Yes or no?

2 JUROR: No.

3 THE COURT: Do you believe that you can set  
4 that relationship completely aside and make up  
5 your mind based solely on what you hear in court  
6 while court is in session?

7 JUROR: I do.

8 THE COURT: And be unaffected by that  
9 relationship?

10 JUROR: Right.

11 THE COURT: Thank you. Please be seated.  
12 Did I get your number?

13 JUROR: Number 9.

14 THE COURT: Number 9?

15 THE BAILIFF: One more standing, Your Honor.

16 THE COURT: I knew y'all -- anybody -- I've  
17 been so rude to y'all over there. Gosh, I mean,  
18 y'all can't nuzzle up over here a little bit?  
19 Y'all come over here. My jurors, come on over  
20 here. If you're on the jury come nuzzle up a  
21 little bit. I feel so rude. Wonderful.

22 Tell me who you know, sir. Your number?

23 JUROR: My number in 336.

24 THE COURT: 336. Tell me who you know.

25 JUROR: I know Deb Mayo. I work for her



## JUROR QUALIFICATION

1 professionally, and also Sandra Smith, related by  
2 marriage.

3 THE COURT: All right. That was very good.  
4 All right. And come on up here for a minute and  
5 let me talk to you.

6 THE BAILIFF: Juror 336, Your Honor.

7 THE COURT: All right. Now --

8 JUROR: Good morning.

9 THE COURT: Good morning. Now, Sandra --

10 JUROR: Sandra Smith.

11 THE COURT: -- is your?

12 JUROR: She's my wife's aunt.

13 THE COURT: She is your wife's aunt?

14 JUROR: Yes.

15 THE COURT: Do y'all visit in each other's  
16 homes?

17 JUROR: I have. Not -- I don't think but,  
18 probably in the past five years, two or three  
19 times.

20 THE COURT: Gotcha. And you said you're  
21 employed?

22 JUROR: Yeah, Deb Mayo, I'm a contracting  
23 officer at the Facility of Engineering and  
24 Acquisition on Parris Island. The hospital is one  
25 of my clients. She's one of my contracting

## JUROR QUALIFICATION

1 officer representatives, so she's a core for me.

2 THE COURT: Gotcha. Gotcha. And so you deal  
3 with her in your business?

4 JUROR: Yes. She -- she's manager of the  
5 janitorial contract with me, so I talk with her,  
6 deal with problems and issues.

7 THE COURT: Gotcha.

8 JUROR: And she reports to me for any issues  
9 that's going on with the contract.

10 THE COURT: Gotcha. And you're a contractor?

11 JUROR: No, I am a contracting officer.

12 THE COURT: You're a contracting -- tell me  
13 what that means. Educate me.

14 JUROR: I work with the federal government.  
15 I create requests for proposal. I negotiate. I  
16 actually authorize federal government in  
17 contractual relationships.

18 THE COURT: Gotcha.

19 JUROR: So I -- and I hire the contractor  
20 that performs the service.

21 THE COURT: Gotcha. All right. Now, let me  
22 address, first of all, your wife's aunt.

23 JUROR: Uh-huh. (Indicating affirmatively.)

24 THE COURT: Do you believe that you could  
25 assess her testimony as you would any other

## JUROR QUALIFICATION

1 witness, or do you think by virtue of the fact she  
2 is a family member by marriage that that would  
3 have an effect on your ability to assess her  
4 testimony?

5 JUROR: I believe that I could assess her  
6 testimony. But I believe in all fairness to you,  
7 all parties involved, it may be a conflict to --

8 THE COURT: In other words, you might be  
9 concerned you might see her at Thanksgiving and  
10 she might say --

11 JUROR: I'm not concerned about her. I'm  
12 more concerned about a fair trial and the  
13 perception of a fair trial.

14 THE COURT: Exactly. And do you think that  
15 that also holds true for the person whose name I  
16 cannot pronounce?

17 JUROR: Deb Mayo?

18 THE COURT: Yeah.

19 JUROR: Not as much. I think this is a small  
20 community, and you tend to bump into people from  
21 time to time. But I do have an ongoing and  
22 current working relationship with her. And,  
23 again, it could be perceived as a conflict.

24 THE COURT: Okay. Very well. And you  
25 believe that the someone reasonably, on the

## JUROR QUALIFICATION

1 outside looking in, perhaps, could perceive that  
2 there would be --

3 JUROR: Right.

4 THE COURT: -- and you have concerns about  
5 that?

6 JUROR: I do. I think that anyone would.

7 THE COURT: Okay.

8 JUROR: I don't have any concern about  
9 myself, but just perception.

10 THE COURT: Okay. All right. I'm more  
11 interested in the reality than I am in perception.  
12 How about that?

13 JUROR: The reality is I call it as I see it.  
14 I am a fair person, you know, it is what it is.

15 THE COURT: Very well.

16 JUROR: I don't have any concern about my  
17 ability.

18 THE COURT: And let me ask this question.  
19 Could Officer Mayo have any impact on you  
20 financially?

21 JUROR: No.

22 THE COURT: All right. Very well. I'm going  
23 to ask you to stay with us.

24 JUROR: Okay.

25 THE COURT: Very well. Thank you, sir.

## JUROR QUALIFICATION

1 All right. Anyone else from that list?

2 (No response.)

3 All right. Ladies and gentlemen, my question  
4 as to the following individuals is this: Are you  
5 related by blood or marriage or acquainted with or  
6 have you or any member of your immediate family,  
7 to your knowledge, ever been treated by the  
8 following individuals. Terrence Baker, MD.  
9 Michael Caplan, MD. Nicole Gates, RN. Beverly  
10 Hendelman, MD. Christian Jansen, MD. Susan  
11 Knight, Ph.D. Royce Malphrus, Ph.D. Janice  
12 McDonald, RN. Joseph McDonald, RN. Scott Moore,  
13 MD. Chris Murphy, MD. Erik Oberg, MD. Sandra  
14 Smith, RN. Dr. Charles Reamy. L. Randolph Waid.  
15 Dr. Scott Moore.

16 Related by blood or marriage, acquainted  
17 with, or have you or any member of your immediate  
18 family, to your knowledge, ever been treated by  
19 any of those individuals? If so, please stand.

20 Come on up, please, sir.

21 THE BAILIFF: Juror 398, Your Honor.

22 THE COURT: Thank you. Hello. Which health  
23 care professional?

24 JUROR: Royce Malphrus.

25 THE COURT: Okay. You or a member of your

## JUROR QUALIFICATION

1 family?

2 JUROR: All of us, yes.

3 THE COURT: Okay. And now or in the past?

4 JUROR: In the past.

5 THE COURT: How long in the past?

6 JUROR: It's been about four years.

7 THE COURT: As a result of that professional  
8 involvement --

9 JUROR: Yes.

10 THE COURT: -- do you believe that that  
11 professional involvement might or could in any  
12 respect interfere with your ability to be  
13 completely fair and impartial both to the  
14 Plaintiff and the Defendant? And it has to be yes  
15 or no.

16 JUROR: No.

17 THE COURT: Do you believe that you can set  
18 that relationship completely aside and make up  
19 your mind based solely on what you hear in court  
20 while court is in session?

21 JUROR: Yes.

22 THE COURT: Finally, do you believe that that  
23 relationship could impact -- would impact your  
24 ability to assess the believability of that  
25 individual's testimony as you would any other

## JUROR QUALIFICATION

1 persons?

2 JUROR: It would have no effect on me.

3 THE COURT: Thank you so much. Please stay  
4 with us.

5 Yes, sir.

6 All right. I think y'all before you leave  
7 me --

8 (Off-the-record discussion held.)

9 THE COURT: Okay. Three additional folks,  
10 please.

11 Ladies and gentlemen, are you related by  
12 blood or marriage or acquainted with Kelly  
13 Franklin, Lattaneeshia Roberts, Jonas Armstrong?  
14 Related by blood or marriage or acquainted with  
15 Kelly Franklin, Lattaneeshia Roberts or Jonas  
16 Armstrong? If so, please stand at this time.

17 (No response.)

18 And I find no one standing.

19 Ladies and gentlemen, let me share with you  
20 that I would now go into asking questions of you,  
21 and this is going to take us another hour.

22 Everybody's going to be famished by then. So it  
23 is appropriate that we take a break and let you  
24 all get some lunch just because -- well, if I had  
25 known we were going to go this long I would have

## JUROR QUALIFICATION

1 just baked something. I would have. I would have  
2 bought a chicken box or something. If we'd have  
3 had brought lunch right here, plate, ice tea,  
4 bread, chicken box, right here. But in that I did  
5 not realize that I needed to bring a chicken box,  
6 I owe everybody an apology. But you are saved  
7 from indigestion because I'm not a good cook. So  
8 there you have it.

9 Ladies and gentlemen, we're going to take a  
10 little bit of time. We will reconvene -- our  
11 esteemed Clerk of Court concurs that you all can  
12 get out, get something to eat and come back and be  
13 back by 2:15. Now, let me tell you something.  
14 You cannot talk about this case. We're in the  
15 middle of jury selection, you know barely  
16 anything, just what I've read to you and I have  
17 introduced you to some folks. But you have a  
18 little tiny bit of information, you may not  
19 discuss this matter or allow anyone to discuss it  
20 with you.

21 Does anyone have any questions about that? I  
22 had a little issue when I was here in Beaufort  
23 last time. Do not talk about this matter or let  
24 anybody talk to you about it, please. In fact, if  
25 anyone wants to talk to you about this case, I



## JUROR QUALIFICATION

1        want you to get their name. If you cannot get  
2        their name, a description, and report it to me  
3        upon return, please. Because that would not be  
4        appropriate.

5            The other thing that I need to tell you is if  
6        you happen to see these lawyers out and about and  
7        they do like this (demonstrating) and they don't  
8        even smile or say hello, that is because they're  
9        scared of me. Because they know what will happen  
10       to them if they did that. And so please  
11       understand that they're not being rude, they just  
12       know that if they happen to come just within your  
13       vicinity, they know that they're to be very  
14       obvious that they're not interacting with you.  
15       And it makes -- and lawyers are -- I know lawyers  
16       are very gregarious by their very nature.

17            Hi. Hold on, it's not audience participation  
18       yet, but it will in a minute.

19            But in any event, please be mindful of that.  
20       Because I don't need my jury pool tampered with  
21       and I don't need -- and so I'm weighing letting  
22       you go before the jury's selected as opposed to  
23       having people keel over from low blood sugar, and  
24       I've decided you all need to get something to eat  
25       because we are going to be awhile longer and --

## JUROR QUALIFICATION

1 but you must be mindful.

2 Do not read anything. Don't listen to  
3 anything about this matter. Do not look at  
4 anything on the Internet. Do not listen to  
5 anything on the radio or the television. You  
6 must -- those of you that are selected to serve on  
7 this jury must receive all of the information from  
8 which you will make up your minds here in court  
9 while court is in session. If you were to go to  
10 your phone looking for information or listen to  
11 anything, that would be contempt of court, and I  
12 take that very seriously.

13 I had a terrible problem last time I was here  
14 in Beaufort. I really have a huge now sore spot  
15 in my being about that, and I'm real serious about  
16 that. So do not talk to anybody about this  
17 matter. Do not listen to anything about this  
18 matter.

19 But do have a lovely lunch and I will see you  
20 at 2:15. Jury panel dismissed.

21 (Lunch recess.)

22

23

24

25

## JUROR QUALIFICATION

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 10th day of March, 2016.

/s/ Mona L. Manley

---

MONA L. MANLEY  
Official 14th Circuit Court Reporter  
(850) 893-6662  
mmanley@sccourts.org

1                   IN THE COURT OF COMMON PLEAS IN THE  
2                               FOURTEENTH JUDICIAL CIRCUIT, IN  
3                   AND FOR BEAUFORT COUNTY, SOUTH CAROLINA

4   Rebecca Delaney, as Personal Representative of the Estate of  
5   Justin Miller,

6                   Plaintiff,

7   vs.

8                   CASE NO. 2012-CP-07-03782

9   CasePro, Inc,

10                  Defendants.

11   -----/

12                               JURY QUALIFICATION

13                               VOLUME 2

14                               \*   \*   \*

15   TRIAL BEFORE:                   Honorable Diane Goodstein

16   DATE:                           October 6, 2015

17   TIME:                           Commenced at 9:30 a.m.  
18                                   Concluded at 5:30 p.m.

19   PLACE:                           Beaufort County Courthouse  
20                                   Beaufort, South Carolina

21   REPORTED BY:                   Mona Whiddon, Stenographer

1 APPEARANCES:

2 REPRESENTING THE DEFENDANT, CasePro:

3 Doug MacKelcan, III, Esquire  
4 Dennis Gary Lovell, Jr, Esquire  
5 Alendra Marie Saber, Esquire  
6 Carlock Copeland & Stair, LLP  
7 40 Calhoun St, Suite 400  
8 Charleston, SC 29401

7 REPRESENTING THE PLAINTIFF(S):

8 Thomas David Hoyle, Esquire  
9 Temitope Olamide Leyimu, Esquire  
10 William Christopher Swett, Esquire  
11 Motley Rice LLC  
12 20 Bridgeside Blvd.  
13 Mt. Pelasant, SC 29464

12 and

13 Crystal Lynn Castleberry, Esquire  
14 Castleberry Law Offices  
15 3712 Swallowtail Drive  
16 Morgantown, WV 26508

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## JURY QUALIFICATION

1 PROCEEDINGS

2

3 THE COURT: Thank you so much, everyone.  
4 And please be seated. I hope that everyone had  
5 a nice lunch. All right. Now. Juror 68  
6 thought -- Juror 68 thought that Juror 68 knew  
7 someone. Hi. Tell me who you think that you  
8 know.

9 JUROR: Kelly Franklin.

10 THE COURT: Francis?

11 JUROR: Franklin.

12 THE COURT: Is the relationship one that is  
13 more personal or professional?

14 JUROR: Personal.

15 THE COURT: Is it an acquaintance-ship, or  
16 is it more of a friendship?

17 JUROR: Friendship and acquaintance.

18 THE COURT: Okay. Do you visit in each  
19 other's homes?

20 JUROR: Not yet. We have children who are  
21 in the same class and then in the Boy Scouts  
22 together.

23 THE COURT: Got you. And so, you have  
24 become friends by virtue of your children being  
25 associated?

## JURY QUALIFICATION

1 JUROR: Yes, that is how.

2 THE COURT: Very well. And as a result of  
3 that relationship, do you believe that that  
4 relationship might or could in any respect  
5 interfere with your ability to be completely  
6 fair and impartial both to the Plaintiff and  
7 Defendant?

8 JUROR: No, I could be impartial.

9 THE COURT: Do you believe that your  
10 relationship with Ms. Franklin could cause you  
11 to view the credibility or the believability,  
12 should she be a witness, differently because of  
13 that relationship? Or do you believe that you  
14 could set that relationship aside and analyze  
15 and evaluate her testimony as you would any  
16 other witness?

17 JUROR: (Nods in the affirmative).

18 THE COURT: That was really a long  
19 question, wasn't it? It probably didn't make  
20 sense. In other words, can you set your  
21 relationship aside as you assess her  
22 credibility?

23 JUROR: Yes.

24 THE COURT: Okay. Very well. Please stay  
25 with us. Anyone else? Just let me say to

## JURY QUALIFICATION

1 everyone, that is absolutely not unusual as  
2 names percolate. You know, maybe, wait a  
3 minute, that is -- who that is? That happens  
4 quite frequently.

5 All right. Now, I have questions to ask of  
6 you.

7 THE COURT: All right. Do you now or have  
8 you ever, or do you have a member of your  
9 immediate family who has served or now serves as  
10 a member of the United States military? If so,  
11 please stand. That is a great question to ask  
12 in Beaufort.

13 JUROR: Half the house.

14 THE COURT: More than that, for sure. For  
15 sure.

16 All right. What I'm going to do is I'm just  
17 going to ask for numbers, your juror number, and  
18 if you would call that out for me. And remain  
19 standing if you would. We are going to start  
20 here. Yes, sir.

21 JUROR: 373.

22 JUROR: 275.

23 JUROR: 232.

24 JUROR: 139.

25 JUROR: 382.



## JURY QUALIFICATION

1 THE COURT: Now I can't even see.

2 JUROR: Fourteen, 9, 43, 110, 153, 98, 94,  
3 208, 65, 363, 31, 55, 298, 34, 398.

4 THE CLERK: Excuse me, y'all are going way  
5 too fast. Are you keeping up with this? Let's  
6 go back to the 55.

7 JUROR: 298.

8 JUROR: 34.

9 JUROR: 398.

10 JUROR: 24.

11 JUROR: 59.

12 JUROR: 285.

13 JUROR: 228.

14 JUROR: 170.

15 JUROR: 26.

16 JUROR: 30.

17 JUROR: 258.

18 JUROR: 306.

19 JUROR: 317.

20 JUROR: 365.

21 JUROR: 274.

22 JUROR: 30.

23 JUROR: 338.

24 JUROR: 395.

25 JUROR: 17.

## JURY QUALIFICATION

1 JUROR: 363.

2 JUROR: 199.

3 JUROR: 280.

4 JUROR: 68.

5 JUROR: 23.

6 JUROR: 324.

7 JUROR: 141.

8 JUROR: 69.

9 JUROR: 101.

10 JUROR: 348.

11 THE COURT: All right. Now, out of those  
12 folks that just gave me your numbers, anyone of  
13 you or family members who work or have worked  
14 while in the military in a health care and/or  
15 medical specialty?

16 JUROR: 275.

17 JUROR: 9.

18 JUROR: 208.

19 THE COURT: Thank you so much.

20 THE COURT: All right. As a part of your  
21 military service, did you or any members of your  
22 immediate family, if you know, work alongside  
23 meaning just what alongside means, along with,  
24 any government contractors? If so, please  
25 stand.

## JURY QUALIFICATION

1 JUROR: 275.

2 JUROR: 139.

3 JUROR: 285.

4 JUROR: 363.

5 JUROR: 153.

6 JUROR: 330.

7 JUROR: 101.

8 THE COURT: Thank you. Yes, sir. Yes.

9 JUROR: Can you repeat the question?

10 THE COURT: I think that you should give  
11 your number. I know so much about you now, I  
12 think you should give your number.

13 JUROR: 363.

14 THE COURT: Perfect.

15 THE COURT: I'm going to ask these two  
16 questions together. Please don't respond to  
17 either until you have heard both. Have you ever  
18 received veterans benefits from the United  
19 States government? That is the first question.

20 And the second question is: Have you ever  
21 participated in the Beaufort County veterans day  
22 parade? Those are the two questions.

23 Now, with regards to the first question, I'm  
24 going to ask it again. Those that need to  
25 respond, I'll ask you to stand. Have you ever

## JURY QUALIFICATION

1 received veterans benefits from a United States  
2 government? And your number?

3 JUROR: 275.

4 JUROR: 232.

5 JUROR: 336.

6 JUROR: 34.

7 JUROR: 280.

8 JUROR: 274.

9 JUROR: 232.

10 JUROR: Me personally or a spouse?

11 THE COURT: Yes, you. Okay, your spouse.

12 JUROR: 285.

13 THE COURT: Okay. And have you ever  
14 participated in the Beaufort County veterans day  
15 parade? If so, please stand.

16 THE COURT: And your number?

17 JUROR: 199.

18 THE COURT: Thank you.

19 JUROR: Does that include clean up  
20 afterwards?

21 THE COURT: Yes.

22 JUROR: Okay, all of them.

23 THE COURT: Do you now or have you in the  
24 past ever received health care services at the  
25 Naval Hospital in Beaufort? You are just so

## JURY QUALIFICATION

1 popular.

2 JUROR: 275.

3 THE COURT: Ever in the ER room, while you  
4 are up?

5 JUROR: 275.

6 THE COURT: Thank you so much. Yes, ma'am?

7 JUROR: 9.

8 THE COURT: In the ER room ever?

9 JUROR: Yes.

10 JUROR: 153.

11 THE COURT: And to include the emergency  
12 room ever?

13 JUROR: Yes, I have.

14 THE COURT: Thank you.

15 JUROR: 330.

16 THE COURT: Emergency room?

17 JUROR: No, ma'am.

18 THE COURT: Okay.

19 JUROR: 139.

20 THE COURT: Emergency room?

21 JUROR: No.

22 THE COURT: All right.

23 JUROR: 336.

24 THE COURT: Emergency room?

25 JUROR: No.

## JURY QUALIFICATION

1 JUROR: 34.

2 THE COURT: Emergency room, no?

3 JUROR: 298.

4 THE COURT: Emergency room?

5 JUROR: I don't think so.

6 THE COURT: Okay.

7 JUROR: 268.

8 THE COURT: Emergency room?

9 JUROR: I don't think so. It's possible,  
10 but it's been a long time.

11 THE COURT: All right. Any person related  
12 to you by blood or marriage ever received health  
13 care services at the Naval Hospital Beaufort?

14 JUROR: What was the question again?

15 THE COURT: Same one, someone related to  
16 you by blood or marriage.

17 JUROR: 275.

18 THE COURT: And the ER room?

19 JUROR: Yes.

20 THE COURT: Okay.

21 JUROR: 9. Yes, ER.

22 THE COURT: Thank you. Yes, sir? I can't  
23 tell the rows, I am sorry.

24 JUROR: 330.

25 THE COURT: And the ER room?

## JURY QUALIFICATION

1 JUROR: No, ma'am.

2 THE COURT: Thank you.

3 JUROR: 141.

4 THE COURT: ER room?

5 JUROR: No.

6 THE COURT: Thank you.

7 JUROR: 101. Yes.

8 THE COURT: Thank you.

9 JUROR: 232, no ER.

10 JUROR: 139, no ER.

11 JUROR: 336, no ER.

12 JUROR: 382, no ER.

13 JUROR: 232, no ER.

14 JUROR: 34, no.

15 JUROR: 398, no.

16 JUROR: 368, I don't think so.

17 JUROR: 285, no.

18 THE COURT: Have you ever worked as either  
19 a contractor for the United States military or  
20 as an employee of a United States military  
21 contractor? If so, please stand.

22 JUROR: 343.

23 THE COURT: Okay.

24 JUROR: 330.

25 JUROR: 139.

## JURY QUALIFICATION

1 JUROR: 382.

2 JUROR: 363.

3 JUROR: 280.

4 THE COURT: Thank you. Are you related by  
5 blood or marriage to anyone who has ever worked  
6 within the four walls of the Naval Hospital  
7 Beaufort? Or have you or any -- you or anyone  
8 that you are related to by blood or marriage  
9 ever worked within the four walls of the Naval  
10 Hospital Beaufort?

11 JUROR: 101.

12 THE COURT: Was it you or a member of your  
13 family?

14 JUROR: My spouse.

15 THE COURT: Currently or in the past?

16 JUROR: He's deceased so --

17 THE COURT: Sorry. Thank you.

18 JUROR: 141.

19 THE COURT: You or a member of your family?

20 JUROR: Family.

21 THE COURT: Now or in the past?

22 JUROR: Now.

23 THE COURT: Now. And a member of your  
24 family who is?

25 JUROR: My uncle.



## JURY QUALIFICATION

1 THE COURT: Your uncle?

2 JUROR: (Nods in the affirmative).

3 THE COURT: Thank you.

4 JUROR: 336.

5 THE COURT: You or a member of your family?

6 JUROR: Member of my family.

7 THE COURT: And that family member is?

8 JUROR: My mother-in-law in the past.

9 THE COURT: In the past. Perfect. Thank  
10 you.

11 Yes, ma'am?

12 JUROR: 268. And my ex-husband. We were  
13 stationed at the Naval Hospital.

14 THE COURT: Thank you.

15 THE COURT: All right. Now, ladies and  
16 gentlemen, I'm going to ask three questions  
17 together. And in the event that you need to  
18 respond, I'm going to have you come forward, in  
19 the event that you need to answer any one of  
20 these.

21 Ladies and gentlemen, there may be issues  
22 that arise in this case that involve Autism  
23 Spectrum Disorder and/or paranoid schizophrenia.  
24 If you believe that you have a sensitivity toward  
25 either of those issues such that it would impact

## JURY QUALIFICATION

1 in any respect your ability to be a juror in this  
2 case I need you to come forward. And that is  
3 paranoid schizophrenia and/or Autism Spectrum  
4 Disorder. That is the first question.

5 The second question is: Are you yourself  
6 divorced or are you related by blood or marriage  
7 to someone whose marriage has ended in divorce and  
8 that issue, that experience, is such that if the  
9 issue of divorce was to come up in this case that  
10 your feeling about divorce may have an impact on  
11 your ability to be a juror in this case?

12 I think that is a better question than asking  
13 in an American society today are you related by  
14 blood or marriage or have you ever been divorced,  
15 it just seems that that makes more sense.

16 And the final question is: Are you now or  
17 have you ever been the parent of minor children  
18 and not continuously had physical custody of those  
19 children, and as a result of your own experience  
20 if that issue was to come up in this case -- what  
21 is that issue? The issue of there being custody  
22 of minor children, but a parent not having  
23 continuous presence of those children, physical  
24 custody of those children, that that would -- that  
25 is such an issue with you that it could impact

## JURY QUALIFICATION

1       upon your ability to be fair and impartial?

2               Those are the three issues. I'm going to go  
3       over them very briefly again. The first one is if  
4       the issue of Autism Spectrum Disorder or paranoid  
5       schizophrenia came up in this case, do you have a  
6       sensitivity to either or both of those issues that  
7       would -- could impact your ability to be fair and  
8       impartial to the Plaintiff and the Defendant in  
9       this case? That is the first one.

10              The second one is: Have you experienced or  
11       someone with whom you are related by blood or  
12       marriage experienced a divorce such that that  
13       issue would impact your ability to be fair and  
14       impartial in this case where that issue may come  
15       up?

16              And finally: Have you or any member of your  
17       immediate family been through a situation where  
18       they are a parent of minor children and not had  
19       physical continual -- not continually had physical  
20       custody of those children and that issue is such  
21       that it would impact your ability to be completely  
22       fair and impartial to the Plaintiff and Defendant  
23       if that issue came up in this case? Does anybody  
24       need me to ask any of those again? If so, come  
25       forward. Or if you need to respond to any of

## JURY QUALIFICATION

1       those, please come forward.

2               THE BAILIFF: 285.

3               THE COURT: I should know that by now. 285

4               JUROR: My son is six and he has Asberger's  
5       Syndrome. So, I would be very impathetic to a  
6       parent that has a child with Autism because I am  
7       a parent.

8               THE COURT: I understand that. You are  
9       concerned that that could have an affect on your  
10      ability to separate yourself?

11              JUROR: I think that I see Autism from a  
12      different light than the general public. I deal  
13      with it in my everyday life. So I would be  
14      impartial to a child who could not help himself.

15              THE COURT: I understand.. I'll ask you to  
16      sit this one out for me.

17              THE BAILIFF: 139, Your Honor.

18              THE COURT: Okay. Hello.

19              JUROR: Hello, Your Honor. I have got,  
20      since this has come up, as a contractor  
21      government relationship thing, my daughter was  
22      the employer of the D.C. killer in Crystal,  
23      (phonetic) okay, the contractor and things like  
24      that. that really impacts me. She lost her  
25      job. He worked underneath her. She had nothing

## JURY QUALIFICATION

1 to do with it. So, if it's the Navy as a  
2 contractor or something like that, I don't think  
3 that I could be fair with you on that.

4 THE COURT: I understand. I understand. I  
5 don't know the answer to that. I don't know  
6 anything about this case. I just got here this  
7 morning, but if you go back to that gate that  
8 you just walked here from I'll ask these lawyers  
9 and see if I can find out.

10 (Off-the-record discussion held.)

11 THE COURT: What he said, he was concerned  
12 about the contractor relationship. His daughter  
13 was a contractor with the Navy and she hired the  
14 D.C. killer and she lost her job over it and  
15 suffered consequences as a result of this act  
16 because he happened to work for her. She had  
17 been involved in his hiring, so he said if  
18 there's something involved like that where the  
19 contractor is hiring -- I think that it's going  
20 to be difficult for me because my daughter has  
21 such negative experiences by hiring the D.C.  
22 killer.

23 (All counsel nod yes.)

24 UNIDENTIFIED SPEAKER: They are absolutely  
25 in this case.

## JURY QUALIFICATION

1 THE COURT: Okay.

2 THE COURT: First of all. Thank you so  
3 much for your candor. I can't --

4 JUROR: I didn't want to keep quiet.

5 THE COURT: Absolutely. And you did  
6 exactly what I implore people to do, ask people  
7 to do, beg people to do. And those issues are  
8 spot on, so I'm going to excuse you from the  
9 service in this case and ask that you not  
10 discuss this matter with fellow jurors. Thank  
11 you.

12 THE COURT: 317.

13 JUROR: When it comes to the Autism  
14 Spectrum Disorder because my son we believe has  
15 -- goes through issues.

16 THE COURT: I got you. So, do you believe  
17 that if the issue came up, that that could  
18 impact your ability to be fair?

19 JUROR: Absolutely.

20 THE COURT: Absolutely. I'll ask you to  
21 sit this one out. And I'll thank you so much  
22 for your integrity. Thank you so much.

23 THE COURT: She's out. Okay. Next?

24 THE BAILIFF: 208, Your Honor.

25 THE COURT: Hello again.

## JURY QUALIFICATION

1 JUROR: Again, here I am.

2 THE COURT: I am so happy to keep seeing  
3 you.

4 JUROR: The only thing is that I, through  
5 my practice, education and training, I have  
6 dealt with primarily Autism spectrum but a  
7 smattering of paranoid schizophrenia, so I  
8 didn't know how this would affect anything but I  
9 thought that I would let you know.

10 THE COURT: This is a part of your  
11 practice?

12 JUROR: Right.

13 THE COURT: I understand. Given the fact  
14 that it's a part of your practice, would you  
15 have -- I mean, you can't help but know what you  
16 know. I mean, you can't help but knowing what  
17 you know, just the mere fact that you have that  
18 knowledge, would that make it difficult for you  
19 to be fair and impartial to the Plaintiff as  
20 well as to the Defendant?

21 JUROR: I don't think so unless I heard  
22 something that was blatantly --

23 THE COURT: Yes, well, I understand that if  
24 you find to be contra to what your own knowledge  
25 and education is, well, I think that that's true

## JURY QUALIFICATION

1 to anyone, but I mean, just because that issue  
2 is in it, you don't have a sensitivity to that  
3 that you feel is -- oh, you know, I only treat  
4 one side or the other, therefore, I would  
5 identify only with one side or the other?

6 JUROR: No.

7 THE COURT: That is a concern that I would  
8 have. Thank you. Thank you for that  
9 information. It was appropriate to share that,  
10 by the way. Thank you. She is staying.

11 THE BAILIFF: 142, Your Honor.

12 THE COURT: Hi.

13 JUROR: For the Autism, in our whole family  
14 we have two members in our extended family that  
15 are on the Autism spectrum. And we support the  
16 cause and everything.

17 And then for the divorce, my aunt recently  
18 went through a divorce about a month ago where her  
19 husband was cheating on her with one of her best  
20 friends.

21 THE COURT: I understand. I understand.  
22 Do you believe that that could, either one of  
23 those, or both together, do you think that that  
24 would impact?

25 JUROR: Yes.



## JURY QUALIFICATION

1           THE COURT: I'm asking that you sit this  
2 one out.

3           JUROR: Thank you.

4           THE COURT: She's out.

5           Yes, next.

6           THE BAILIFF: 199, Your Honor.

7           THE COURT: Yes.

8           JUROR: The issue of Autism, I do have a  
9 cousin that is a higher functioning Autism. And  
10 I know several people with Autism as well. My  
11 father, I have helped him sit with a child with  
12 Autism. Now, as far as being biased, I believe  
13 that I could be.

14          THE COURT: You don't believe that that  
15 involvement would influence one way or another  
16 your ability to be fair and impartial to the  
17 Plaintiff and Defendant? You could set those  
18 aside and make up your mind based on what you  
19 hear in this courtroom?

20          JUROR: Yes.

21          THE COURT: All right. You can stay with  
22 us. Yes, sir.

23          THE COURT: Ladies and gentlemen, I have --  
24 I'm going to ask you if you know some additional  
25 folks. Are you related by blood or marriage or

## JURY QUALIFICATION

1 acquainted with Calvin Dante Hunt or anyone in  
2 his family? The names of family members that I  
3 have. I had that just in general terms. Are  
4 you related by blood or marriage or acquainted  
5 with Calvin Dante Hunt or anyone in his family?  
6 If so, please stand.

7 (No response.)

8 THE COURT: I find no one standing. Ladies  
9 and gentlemen, are you related by blood or  
10 marriage or acquainted with, or have you or any  
11 member of your immediate family to your  
12 knowledge ever been represented by Cory Fleming  
13 or any of the attorneys at the Moss, Kuhn,  
14 Fleming law firm? Cory Fleming or any of the  
15 attorneys at Moss, Kuhn, Fleming law firm? All  
16 right, your number sir?

17 JUROR: 382, Moss Kuhn.

18 THE COURT: Who do you know?

19 JUROR: Jim Moss.

20 THE COURT: You know Jim Moss. All right.

21 JUROR: I used to -- I used to be the Orkin  
22 Pest Control man there.

23 THE COURT: All right. At the firm. As a  
24 result of that past relationship, could that  
25 interfere in your ability to be fair and

## JURY QUALIFICATION

1 impartial?

2 JUROR: No, sir.

3 THE COURT: Your number?

4 JUROR: 187.

5 THE COURT: Tell me who you know.

6 JUROR: Mr. Moss.

7 THE COURT: Relationship professional or  
8 personal?

9 JUROR: Personal.

10 THE COURT: Do you visit in each other's  
11 homes?

12 JUROR: Good friends with his son, or I  
13 have been.

14 JUROR: Visit in his home by virtue of your  
15 relationship? His son is moved out?

16 JUROR: He is a neighbor.

17 THE COURT: A neighbor, okay. As a result  
18 of that relationship do you believe that that  
19 might interfere with your ability to be fair and  
20 impartial both to the Plaintiff as well as the  
21 Defendant?

22 JUROR: No, ma'am.

23 THE COURT: Thank you. Yes?

24 JUROR: 363.

25 THE COURT: Yes, sir, tell me who you know.

## JURY QUALIFICATION

1 JUROR: Mr. Moss.

2 THE COURT: He would be so thrilled. All  
3 right. And do you know -- is that more of an  
4 acquaintance-ship, professional relationship?

5 JUROR: Professional.

6 THE COURT: Professional relationship. Did  
7 he represent you in the past?

8 JUROR: No, he represented somebody against  
9 me.

10 THE COURT: Oh. As a result of that  
11 relationship would that, could that impact on  
12 your ability to be fair and impartial to this  
13 Plaintiff in this case?

14 JUROR: It could be.

15 THE COURT: It could?

16 JUROR: Yes.

17 THE COURT: Very well. I'll ask you to sit  
18 this one out.

19 JUROR: Okay.

20 JUROR: 23. Cory Fleming, he is my  
21 neighbor and we are friends.

22 THE COURT: Do you visit in each other's  
23 home?

24 JUROR: No.

25 THE COURT: Can you set that aside and be

## JURY QUALIFICATION

1 fair and impartial to both the Plaintiff and the  
2 Defendant?

3 JUROR: Yes.

4 THE COURT: And you are number 9?

5 JUROR: Number 9.

6 THE COURT: Who do you know?

7 JUROR: I just served on a jury where Jim  
8 Moss was representing the Defendant.

9 THE COURT: I understand. That is the  
10 extent. Would that impact your ability to be  
11 fair and impartial to these parties?

12 JUROR: No.

13 THE COURT: Thank you. Please be seated.  
14 Stay with us.

15 And are you related by blood or marriage or  
16 acquainted with Duffy Stone? Do y'all know who  
17 Duffy Stone is? He is your Solicitor in the 14th  
18 Circuit. If you are acquainted or related with  
19 Duffy Stone, please stand at this time.

20 All right. Is your relationship one  
21 professional, personal, associated with business?

22 JUROR: Associated with business. I served  
23 under his Solicitor mentor program.

24 THE COURT: Got you. Would that impact  
25 your ability to be fair and impartial to these

## JURY QUALIFICATION

1 parties?

2 JUROR: No, ma'am.

3 THE COURT: Thank you, sir.

4 Ladies and gentlemen, this is going to be --  
5 I am -- this is going to be a general question,  
6 but at the end of -- at the end of the day, the  
7 question is: Are you related by blood or marriage  
8 or acquainted with individuals who may have  
9 responded to the events of February the 24th,  
10 2012? And that includes law enforcement officers,  
11 first responders, fire department personnel,  
12 emergency medical technician, 911 dispatch, law  
13 enforcement officers? And I think that that  
14 covers the gambit. If so, please stand. Oh, the  
15 Coroner's Office. All right.

16 THE COURT: Very well. I need you one at a  
17 time, please come forward. All right.

18 THE BAILIFF: Juror 398, Your Honor.

19 THE COURT: Hi. Tell me who you know.

20 JUROR: I know many of the responders, 911  
21 dispatch. I am in the emergency services  
22 business, so I deal with these people ongoing,  
23 on an ongoing basis, what have you. Police,  
24 fire, EMS, all of those.

25 THE COURT: Have you had any conversations

## JURY QUALIFICATION

1 with those individuals about this particular  
2 incident?

3 JUROR: Yes.

4 THE COURT: Tell me about those.

5 JUROR: It was just basically after the  
6 event, what happened, you know, rumors or  
7 whatever and discussions about the rare events  
8 that took place and the fire truck being  
9 involved and other responders and what have you.  
10 So, there was just a lot of talk and speculation  
11 or innuendo about what took place, why it  
12 happened, what happened, things of that nature,  
13 just a lot of discussion about the case, you  
14 know, pending sometime back.

15 THE COURT: Got you. I think that given --  
16 would you say that you have had more than three  
17 conversations?

18 JUROR: Yes.

19 THE COURT: More than four?

20 JUROR: Yes.

21 THE COURT: More than ten?

22 JUROR: Yes, quite a bit of discussion.

23 THE COURT: I think in all fairness, I'll  
24 ask you to sit this one out. Thank you for  
25 being here today. I think that I would be most

## JURY QUALIFICATION

1 appreciative if you would not discuss this  
2 matter. He's out.

3 THE BAILIFF: Juror 199, Your Honor.

4 THE COURT: Okay. Hi. Yes, sir.

5 JUROR: I do know several officers. As far  
6 as anybody being involved in the case, I haven't  
7 had any conversations with anyone.

8 THE COURT: In other words, you don't know  
9 if they did or not. In other words, you know  
10 several officers and you don't know if they  
11 happen to --

12 JUROR: Yes.

13 THE COURT: You haven't had conversations  
14 with them?

15 JUROR: No, I'm pretty much a hermit.

16 THE COURT: Stop it.

17 Next.

18 THE BAILIFF: Juror 86, Your Honor.

19 THE COURT: Yes, hi.

20 JUROR: My son is a, fire department here  
21 in Beaufort, EMT. And we have discussed this.

22 THE COURT: Oh, okay. And how many times  
23 have y'all discussed it?

24 JUROR: Probably four, five.

25 THE COURT: Four times, five times?



## JURY QUALIFICATION

1 JUROR: Uh-huh. (Indicating  
2 affirmatively.)

3 THE COURT: How recently?

4 JUROR: A few days ago.

5 THE COURT: A few days ago?

6 JUROR: Uh-huh. (Indicating  
7 affirmatively.)

8 THE COURT: What prompted the discussion a  
9 few days ago?

10 JUROR: Something on the TV.

11 THE COURT: What was on the TV?

12 JUROR: Something about a jury trial coming  
13 up.

14 THE COURT: Got you. Did you have your  
15 juror summons at the time?

16 JUROR: No.

17 THE COURT: Okay. And I mean, what did  
18 y'all talk about that it was coming up?

19 JUROR: He is a member of the fire  
20 department and I worked in an ER for ten years  
21 before I moved here ten years ago, so there was  
22 some big discussion.

23 THE COURT: Big discussion. And do you  
24 have any opinions about this matter?

25 JUROR: Yes.

## JURY QUALIFICATION

1           THE COURT: Okay. And do you think that  
2           you could put those opinions aside and make up  
3           your mind based on what you hear in court while  
4           court is in session?

5           JUROR: No, ma'am.

6           THE COURT: Thank you for your candor.

7           JUROR: Sorry.

8           THE COURT: No, no sorry. No, no, ma'am.  
9           Thank you is appropriate. Did y'all get a  
10          number?

11          THE CLERK: 86.

12          THE BAILIFF: Your Honor, 353, Your Honor.

13          THE COURT: Hi.

14          JUROR: I have an uncle who is a Beaufort  
15          County Sheriff. I have a cousin, a firefighter  
16          and first responder. And I work in the  
17          emergency department at Beaufort Memorial. I  
18          haven't discussed it with anyone.

19          THE COURT: You don't know if they have any  
20          involvement?

21          JUROR: No.

22          THE COURT: If I instruct you not to have  
23          discussions with them?

24          JUROR: Okay.

25          THE COURT: You would have no problem with

## JURY QUALIFICATION

1           that?

2                   JUROR:  No, ma'am.

3                   THE COURT:  With all of those experiences  
4           in your life, do you believe that those  
5           realities, you have these relationships with  
6           these people and you worked where you worked,  
7           that they together, individually, might impact  
8           your ability to be fair and impartial to both  
9           the Plaintiff and Defendant?

10                  JUROR:  No, ma'am.

11                  THE COURT:  You think that you can set all  
12           of that aside and base your decision on what you  
13           hear in court while court is in session?

14                  JUROR:  Yes.

15                  THE COURT:  Thank you.

16                  THE BAILIFF:  Juror 9, Your Honor.

17                  JUROR:  I just work with all of the firemen  
18           and law enforcement, and of course, the Public  
19           Works cleans up after everything.

20                  THE COURT:  Exactly.  Have you had any  
21           conversations with the folks about this event?

22                  JUROR:  No.

23                  THE COURT:  All right.  And have you -- the  
24           fact that you work with these people, the fact  
25           that you have, on a daily basis, do you believe

## JURY QUALIFICATION

1       that the fact that you work with them has an  
2       impact one way or another on your ability to be  
3       completely fair and impartial to both the  
4       Plaintiff as well as the Defendant?

5               JUROR:  No.

6               THE COURT:  Can you set those relationships  
7       aside and make up your mind based on what you  
8       hear in court?

9               JUROR:  Yes.

10              THE COURT:  In other words, at the end of  
11       the day, do you believe that you would be, as  
12       you make a judgment, would it enter into your  
13       mind what would so and so do?  Or can you put  
14       all of that out of your mind?

15              JUROR:  No, I don't care what anyone else  
16       would do.

17              THE COURT:  That is clear in your mind.  
18       Okay.

19              THE BAILIFF:  373, Your Honor.

20              JUROR:  I have a casual acquaintance with  
21       one of the police officers in Port Royal who  
22       responded to the situation.

23              THE COURT:  You know that because you all  
24       have had a conversation about that?

25              JUROR:  No, not really.

## JURY QUALIFICATION

1           THE COURT: How do you know that he  
2 responded?

3           JUROR: I guess that we had a -- he, when  
4 he was running to respond he fell and broke his  
5 arm. Everybody was kind of aware of it. We go  
6 to the same church together.

7           THE COURT: I got you. As a result of his  
8 involvement and your relationship with him, do  
9 you believe that that would impact your ability  
10 to be completely fair and impartial to both the  
11 Plaintiff as well as the Defendant in this case?

12          JUROR: No, I don't think that it has any  
13 impact.

14          THE COURT: Can you set that relationship  
15 aside?

16          JUROR: Yes.

17          THE COURT: And make up your mind based on  
18 what you hear in court while court is in  
19 session?

20          JUROR: Yes, ma'am.

21          THE COURT: Okay. Hold on, we are getting  
22 sort of to the end.

23               (Off-the-record discussion held.).

24          THE COURT: Ladies and gentlemen, thank you  
25 for your patience, I have just a few more

## JURY QUALIFICATION

1 questions. Ladies and gentlemen, if you haven't  
2 already told me, are you related by blood or  
3 marriage or acquainted with any police, EMS, 911  
4 dispatch, law enforcement officers or any other  
5 public servant who responded to any of the motor  
6 vehicle accidents which were involved in this  
7 incident on February the 24th, 2012? If you  
8 haven't already told me I'm going to ask you to  
9 please stand and come forward with regards to  
10 that question.

11 Anyone need me to ask it again? Nope. Very  
12 well.

13 My second question is, or my next question  
14 rather: Ladies and gentlemen, do any of you know  
15 or are you related by blood or marriage or  
16 acquainted with Christopher Miller, Jennifer Earl  
17 or Sonny Earl? If so, please stand.

18 (No response.)

19 THE COURT: I find no one standing.

20 THE COURT: Okay. Oh, ladies and  
21 gentlemen, did you know Edward Ray? If so,  
22 please stand. Did you know Edward Ray?

23 (No response.)

24 THE COURT: And I find no one standing.

25 Two questions that I'm going to ask together.

## JURY QUALIFICATION

1 First question is this: Do you or any member of  
2 your immediate family possess an RN or  
3 registered nurse or MD, medical doctor, license  
4 or any other medical license?

5 And the second question is: Have you ever  
6 been a Plaintiff or a Defendant in a lawsuit such  
7 that that experience might or could impact your  
8 ability to be fair and impartial to both this  
9 Plaintiff and this Defendant? If you need to  
10 respond to either one of those questions, please  
11 come forward.

12 THE BAILIFF: Juror 382, Your Honor.

13 THE COURT: All right.

14 JUROR: Good afternoon.

15 THE COURT: Hi again.

16 JUROR: My sister-in-law is an RN.

17 THE COURT: Perfect, thank you. That is  
18 wonderful. Thank you, sir.

19 THE BAILIFF: Juror 305, Your Honor.

20 JUROR: How are you doing? I'm married to  
21 a wife who is a registered nurse. And second, I  
22 was deposed in a product liability case.

23 THE COURT: Yes.

24 JUROR: Which did not give me good  
25 experience in that area, but it was settled by

## JURY QUALIFICATION

1 the insurance company out of court so I never  
2 went to court. But I was deposed because the  
3 company that I worked for, I signed off on a  
4 copy of the product so I was deposed.

5 THE COURT: As a result of that experience,  
6 do you think that you can set that aside and  
7 make up your mind based on what you hear in  
8 court while court is in session?

9 JUROR: Yes, I am hesitant to say yes, but  
10 it was a while ago. I just had a bad experience  
11 with it, but I don't know that much about this  
12 case so.

13 THE COURT: Let me ask you this question:  
14 Do you know anything more than what we have  
15 talked about, what I have told you today?

16 JUROR: No.

17 THE COURT: Okay. And so then back to your  
18 own, how long ago was that experience?

19 JUROR: Twenty years ago.

20 THE COURT: Twenty years ago, okay?

21 JUROR: It was a -- it was a death  
22 situation where a person who used our product  
23 used it totally wrong and died and I was deposed  
24 because I was the project manager for the  
25 product and it was a very lengthy and very



## JURY QUALIFICATION

1 detailed deposition that I'll never forget.

2 THE COURT: I hope that it's not as lengthy  
3 as voir dire of the jury. And those are very  
4 unpleasant and can be very unpleasant  
5 situations, they just are by nature of our  
6 advocacy system. So the question is whether or  
7 not you can put that down and say, okay, I am a  
8 juror in this case and I have to look only at  
9 this evidence and make up my mind based only on  
10 what I hear in court while court is in session.  
11 I have to put that aside. Is there any question  
12 in your mind that you would be unable to do  
13 that? If there is, it is just best to be  
14 comfortable with where you are. You have got to  
15 be comfortable that you can do that. This is my  
16 only chance that I can ask you.

17 JUROR: Yes, I think that it would be best  
18 that maybe I shouldn't stay here.

19 THE COURT: It would concern you. Your  
20 face is red just talking about it.

21 THE COURT: I'm just being honest.

22 THE COURT: Don't ever worry about this.  
23 You are flushed just talking about it.

24 JUROR: It really was not a good  
25 experience.

## JURY QUALIFICATION

1 THE COURT: I'll ask you to sit this one  
2 out. Thank you.

3 THE BAILIFF: Juror 55.

4 THE COURT: Hello.

5 THE COURT: My wife is a licensed RN.

6 THE COURT: Thank you.

7 THE BAILIFF: Juror 34, Your Honor.

8 THE COURT: Hi.

9 JUROR: My wife is a registered nurse.

10 THE COURT: Thank you so much.

11 THE BAILIFF: Juror 208, Your Honor.

12 THE COURT: Here she comes. Yes.

13 JUROR: Registered nurse and licensed  
14 professional clinical counselor.

15 THE COURT: Thank you.

16 THE BAILIFF: Juror 342, Your Honor.

17 THE COURT: Hi.

18 THE COURT: My father-in-law is a DO in  
19 Okatie pain management clinic. And a question  
20 that you asked before that I was thinking about,  
21 did you say schizophrenia? Was manic bipolar in  
22 there? My husband sometimes they think he is,  
23 but he's not been diagnosed but --

24 THE COURT: I'm with you. I get it. But  
25 would that have an affect on your ability to be

## JURY QUALIFICATION

1 fair and impartial?

2 JUROR: I don't think so.

3 THE COURT: Very well. It is my  
4 understanding that is not to be an issue in this  
5 case, correct?

6 JUROR: Yes.

7 THE BAILIFF: Juror 353, Your Honor.

8 JUROR: I am a physician assistant,  
9 licensed.

10 THE COURT: You are a physician assistant.  
11 I thought that you were an RN, I apologize.  
12 Physician assistant, wonderful. Both are  
13 wonderful.

14 THE BAILIFF: Juror 8, Your Honor.

15 THE COURT: Hi.

16 JUROR: About 25 years ago my wife was  
17 involved in a car accident about 200 miles at  
18 home. And she ended up being sued. She got hit  
19 but she ended up getting sued. And it was a  
20 very bad experience. And I didn't have the  
21 money at that time -- we just bought a house --  
22 to get a lawyer. And they basically wound up  
23 suing somebody to get money so I think that it  
24 would skew my opinion.

25 THE COURT: I get it. You are so wonderful

## JURY QUALIFICATION

1 to be so candid. I'll ask you to sit this one  
2 out. Thank you so kindly.

3 THE COURT: Let me just say too that his  
4 physical -- his lips were trembling. It was a  
5 long time ago, he is still very angry about it.  
6 I wanted the record to reflect what I saw.

7 THE BAILIFF: Juror 252.

8 JUROR: My mother is an RN. I probably  
9 should have come up earlier. My parents are  
10 both divorced, three kids, child of a divorced  
11 family. And my grandfather also owns a hospital  
12 in Japan and patients -- I have been there and  
13 seen patients that suffered from schizophrenia.  
14 I probably should have come up earlier.

15 THE COURT: That is okay. This is normal,  
16 this is absolutely normal. Should I, should I,  
17 and then I'm on to the next question.

18 JUROR: Right.

19 THE COURT: Exactly. As a result of those  
20 things together or separate, might they or could  
21 they interfere in your ability to be completely  
22 fair and impartial to the Plaintiff or  
23 Defendant?

24 JUROR: I can honestly say yes.

25 THE COURT: Do you know which one?

## JURY QUALIFICATION

1 JUROR: I would say both, firsthand, both  
2 of them.

3 THE COURT: Exactly. Thank you so much for  
4 your candor, I will ask you to sit this one out.

5 THE BAILIFF: Juror 9, Your Honor.

6 THE COURT: Yes.

7 JUROR: Sorry, but just about everybody in  
8 my family is either military or medical.

9 THE COURT: That is great, wonderful.

10 JUROR: A daughter, four sisters, four  
11 nieces and a nephew that are all nurses.

12 THE COURT: Wonderful, thank you.  
13 Wonderful, thank you.

14 THE BAILIFF: Juror 14, Your Honor.

15 THE COURT: Yes.

16 JUROR: Just responding to the second  
17 question. I'm general counsel of a company so I  
18 spend a lot of time being Plaintiff and  
19 Defendant.

20 THE COURT: And the question went on to  
21 say, as a result of experiences in that  
22 capacity, might they or could they interfere?

23 JUROR: I would like to think not. Those  
24 are fairly formal experiences. I guess I am  
25 disqualified so . . .

## JURY QUALIFICATION

1 THE COURT: Tell me about that. Do you  
2 believe that your experience, your livelihood,  
3 that those experiences would interfere with your  
4 ability to be fair and impartial in this case to  
5 this Plaintiff and Defendant?

6 JUROR: I would certainly like to think  
7 not.

8 THE COURT: You can stay with us then.

9 THE BAILIFF: Juror 338, Your Honor.

10 JUROR: My aunt is a registered nurse at  
11 Beaufort Memorial Hospital.

12 THE COURT: Thank you. We haven't met. So  
13 nice to see you up here. Hello. Thank you.  
14 Please stay with us.

15 THE BAILIFF: Juror 336, Your Honor.

16 THE COURT: Yes, hi. You just need some  
17 exercise.

18 JUROR: Yeah. Two things, my wife, she is  
19 an RN. She's not currently practicing.  
20 Certified medical coder. And my mother-in-law,  
21 she had her RN, worked at the hospital, but  
22 she's retired.

23 THE COURT: All right. Thank you very  
24 much. My general last one is about to happen.

25 UNIDENTIFIED SPEAKER: One thing, you

## JURY QUALIFICATION

1       crossed off the Church of Latter-Day Saints.  
2       They had very little activity in the community,  
3       but that is one thing that they did.

4               THE COURT: I'm not going to do that.  
5       Ladies and gentlemen, this is my concluding  
6       question is this -- do you know any reason why  
7       you ought not, should not, could not be a juror  
8       in this case being ready, willing and able to  
9       listen to the evidence and make up your minds  
10      based solely on what you hear in court while  
11      court is in session being completely unaffected,  
12      not affected by the -- case law uses the word  
13      extraneous -- matters outside of the court?

14              For example, do you not like litigation in  
15      general such that it would keep you from being  
16      able to be fair and impartial to each of these  
17      parties? Do you have an orientation one way or  
18      the other? Are you concerned about these issues  
19      or any individuals that I spoke of that might be  
20      witnesses in this matter? Is there anything about  
21      this matter, about these issues, or perhaps there  
22      was something that you didn't tell me earlier  
23      because you were shy and now we have been around  
24      each other for a while and we have warmed up, you  
25      are more comfortable telling me now, you know,

## JURY QUALIFICATION

1       that which you were not so comfortable about?

2             You know, it would be hard to tell me now  
3       that at home you have tickets to Tahiti and you  
4       are supposed to leave Thursday afternoon and you  
5       forgot about this this morning but now you are  
6       more comfortable to tell me, I'm supposed to leave  
7       for Tahiti at 4:00 Thursday, that is all right.  
8       No problem. You better have a big suitcase, we  
9       are all going with you.

10            But in other words, is there anything,  
11       anything at all that we need to talk about?  
12       Because, ladies and gentlemen, if you are a juror  
13       in this case you must be ready, willing, and able  
14       to listen to the evidence and to make up your  
15       minds based solely on what you hear in this  
16       courtroom while court is in session and you must  
17       be completely and totally fair and impartial to  
18       the Plaintiff and to the Defendant. If there's  
19       anything whatsoever that we need to discuss, I  
20       want you to please come forward and give us an  
21       opportunity to talk about, to include those  
22       tickets to Tahiti.

23            And we reached this point in jury  
24       qualification in my County, in Dorchester County,  
25       and we reached this point in this trial and I



## JURY QUALIFICATION

1       always look out here to this young man who was  
2       sitting here and he stood up and said, Judge, my  
3       wife is in labor at Tricounty Hospital, I'd like  
4       to be there for the birth of my first child. You  
5       know, is anyone's spouse in labor?

6               (No response.)

7               THE COURT: Very well. Is there anyone  
8       that people need to talk about, please do so  
9       now.

10              (No response.)

11              THE COURT: We need Jeopardy music. I find  
12       that the panel is qualified. We are going to  
13       have three alternates. The alternates, do you  
14       strike the jury from a blind person or small  
15       child? Plaintiff, do you waive it?

16              MR. HOYLE: We waive, Your Honor. We are  
17       not in Horry County, Judge.

18              THE COURT: And I would just take note,  
19       guess what, Chief Justice is taking care of that  
20       but I'll ask, Will y'all work on it?

21              THE COURT: Let me tell you what's  
22       happening next, ladies and gentlemen, these  
23       lawyers will receive the final sheets. They are  
24       called strike sheets. We need to come up with  
25       another term. I'll do that one day. They need

## JURY QUALIFICATION

1       one more time to look at you. So, they will  
2       probably leave the courtroom and retire to the  
3       nice rooms that they have outside of the  
4       courtroom, and they are going to take ten  
5       minutes once they receive their sheets. Did you  
6       get that? And then they are going to return to  
7       the courtroom.

8               When they return to the courtroom I'll turn  
9       it over to the clerk and then she's going to hear  
10      numbers, first from the Plaintiff and then from  
11      the Defense. Four from each with regards to the  
12      jury, and then one each with each of our  
13      alternates. And the numbers that you are hearing  
14      are not your juror numbers. You have learned it  
15      by now. Like, juror number nine, she knows that.  
16      And juror number 68 knows that she's juror 68,  
17      right? Yeah. We take those numbers and process  
18      those numbers, Thanksgiving turkey on the bone as  
19      opposed to what you buy where it is sliced. Thing  
20      of life.

21             The numbers that you are hearing are not your  
22      juror numbers. We process those numbers when we  
23      go through this propose, and then once that occurs  
24      then we are going to select a jury. And then I  
25      have a few comments for our remaining jurors at

## JURY QUALIFICATION

1       that point in time. So, y'all ready? Ready for  
2       your sheets?

3               THE COURT: Okay. One through 20, please.  
4       On the numbers, 1 through 20 are the jurors.  
5       Twenty-one, 22, and 23 are alternate number one.  
6       Twenty-four, 25, 26 alternate number two.  
7       Twenty-seven, 28 and 29 alternate number three.  
8       Math was not my thing.

9               THE CLERK: You are doing well.

10              THE COURT: Please keep that in mind,  
11       Counselor, as you go through your strikes.  
12       Okay, most importantly, 1 through 20 will be  
13       your jury.

14              THE COURT: Y'all be at ease, if anyone  
15       needs a comfort break be at ease. I need you  
16       back in the courtroom at 25 until 4:00.

17              (Whereupon, a brief recess was taken.)

18              THE COURT: Plaintiff ready to select a  
19       jury?

20              MR. HOYLE: Yes, Your Honor.

21              THE COURT: And the Defense?

22              MR. LOVELL: Yes, Your Honor.

23              THE COURT: All right. Turning it over to  
24       you.

25              THE CLERK: We will be striking between 1

## JURY QUALIFICATION

1           and 20. For the Plaintiff.

2           MR. HOYLE: Your Honor, Plaintiff strikes  
3           juror number 12.

4           MR. LOVELL: Strike juror number 4.

5           THE CLERK: Plaintiff?

6           MR. HOYLE: Plaintiff strikes juror number  
7           16.

8           THE CLERK: Defendant?

9           MR. LOVELL: Defendant strikes juror number  
10          20.

11          MR. HOYLE: Plaintiff strikes juror number  
12          8.

13          THE CLERK: Defense?

14          MR. LOVELL: Defense strikes juror number  
15          15.

16          THE CLERK: Plaintiff?

17          MR. HOYLE: Plaintiff strikes juror number  
18          9.

19          THE CLERK: Defense?

20          MR. LOVELL: Defense strikes juror number  
21          14.

22          THE CLERK: We will be striking for  
23          alternates, jurors 21 through 23. For the  
24          Plaintiff?

25          MR. HOYLE: Plaintiff strikes juror number

## JURY QUALIFICATION

1           21.

2           THE CLERK:  Defense?

3           MR. LOVELL:  Defense strikes juror number

4           23.

5           THE CLERK:  Twenty?

6           MR. LOVELL:  Twenty-three, sorry.

7           THE CLERK:  Second alternate, 24 through

8           26.

9           MR. HOYLE:  Madam Clerk, Plaintiff strikes  
10          juror number 25.

11          THE CLERK:  Defense?

12          MR. LOVELL:  Defense strikes juror number

13          24.

14          THE CLERK:  And for alternate number three,  
15          27 through 29.

16          Plaintiff?

17          MR. HOYLE:  Madam Clerk, Plaintiff strikes  
18          juror number 27.

19          THE CLERK:  Defense?

20          MR. LOVELL:  Defense strikes number 29.

21          THE CLERK:  For the Plaintiff the strikes  
22          are 8, 9, 12, 16; is that correct?

23          MR. HOYLE:  I apologize, Madam Clerk, would  
24          you say that one more time?

25          THE CLERK:  Number 8, number 9, number 12,

## JURY QUALIFICATION

1       number 16?

2               MR. HOYLE: That is right.

3               THE CLERK: For the Defense, number 4,  
4       number 14, number 15, number 20?

5               MR. LOVELL: That is correct.

6               THE CLERK: Alternate number one strike for  
7       the Plaintiff, 21. Strike for the Defendant,  
8       23.

9               Alternate number two, Plaintiff strikes 25;  
10       Defendant, 24.

11              Alternate three, Plaintiff strikes 27;  
12       Defense strikes 29.

13              THE COURT: Is that correct on behalf of  
14       the Plaintiff?

15              MR. HOYLE: Yes, Your Honor.

16              MR. LOVELL: That is correct, Your Honor.

17              THE COURT: Are there any matters regarding  
18       the qualification or selection of the jury from  
19       the Plaintiff?

20              MR. HOYLE: One moment, Your Honor.

21              THE COURT: Certainly.

22              MR. HOYLE: Your Honor, may we take up a  
23       matter of law concerning jury qualification?

24              THE COURT: Sure. Sure. Let me see you at  
25       sidebar, counsel.

## JURY QUALIFICATION

1 (Off-the-record discussion held.)

2 THE COURT: Ladies and gentlemen, there is  
3 a matter that I must take up outside of your  
4 presence. If you will follow our bailiffs  
5 across the hall, we will be with you shortly.

6 (Jury panel exits the courtroom at 3:45 p.m.)

7 THE BAILIFF: Jury is clear and door is  
8 closed, Your Honor.

9 THE COURT: Thank you so much. Yes, sir.

10 MR. HOYLE: Your Honor, good afternoon, for  
11 the record, David Hoyle, on behalf of the  
12 Plaintiff. I reluctantly bring this motion, but  
13 in reviewing the first 20 jurors on our strike  
14 sheets, five of those persons are identified on  
15 the Clerk of Court's random strike sheet as  
16 having a race of black and/or African American.  
17 Of those five persons, I struck one of those  
18 individuals. The remaining three strikes I  
19 utilized involved persons who were Caucasian. I  
20 note that the Defendant in contrast struck one  
21 Caucasian and used his other three strikes with  
22 respect to African Americans or persons of  
23 color. As a result, pursuant to Batson case law  
24 as recognized by our state, I respectfully make  
25 a Batson challenge. I believe that it is the

## JURY QUALIFICATION

1 right of the voir dire panel that has been  
2 chosen to have the right to sit on a jury has  
3 been violated.

4 Certainly, from the Plaintiff perspective a  
5 non-race gender reason is used and we think that  
6 it's prejudice to us and we would make this motion  
7 and ask this Court to grant that motion after  
8 hearing from the Defendant and dismiss this panel.

9 MR. LOVELL: Your Honor, we object to this  
10 motion. These are race-neutral strikes. I can  
11 give you reasons behind them.

12 THE COURT: All right.

13 MR. LOVELL: As to -- sorry, I have to  
14 look. As to juror number 4 on the strike sheet,  
15 65 on the original, 24 year old woman. The  
16 education was none. Listed employment as  
17 server. Our concern is that the decedent is  
18 close to the age of that young lady. And we  
19 feel, and I justify my strike in that  
20 educational background lacking, and age equal to  
21 that of the decedent, and also lack of any  
22 significant work history. We felt that she  
23 would not be an appropriate juror with respect  
24 to this case.

25 THE COURT: Three reasons, close to the age



## JURY QUALIFICATION

1 of decedent, no education mentioned and lack of  
2 work history.

3 MR. LOVELL: Inadequate work history as a  
4 server. She had a work history. She mentioned  
5 that she was a server. And I forgot the name of  
6 the place.

7 THE COURT: All right.

8 MR. LOVELL: The next one.

9 THE COURT: Number nine on the strike  
10 sheet, 336. Sorry, that was the Plaintiff's  
11 strike, I'm sorry. The next one is number 14,  
12 Mary Smalls, Juror 338.

13 MR. LOVELL: Your Honor, Ms. Smalls  
14 indicated that both she and her husband are  
15 retired from the postal service. She indicated  
16 a college education. My concerns there were  
17 that with their employment history in a  
18 governmental entity, i.e., postal service, there  
19 is relationship between the Navy, governmental  
20 entity, and our client that deals with them. I  
21 felt like she might not understand the  
22 contractual relationships between contractors  
23 and subcontractors and the other. And that was  
24 my basis for the strike of that lady.

25 THE COURT: All right.

## JURY QUALIFICATION

1           MR. LOVELL: I believe that the final one,  
2           Your Honor, was juror number 306, which is  
3           number 15 on the strike sheet. Twenty-two year  
4           old gentlemen, again, close in age to the  
5           decedent, within a few years. Also his  
6           employment history, a little conflicting between  
7           the original jury sheet. He indicated that he  
8           was a contractor for Hargray, another sheet that  
9           we had showed Food Lion. Anyway, I think that  
10          his education is inadequate to understand this.  
11          And he has also listed high school education. I  
12          felt that would impact his ability to understand  
13          the issues in this case. Those are the reasons,  
14          Your Honor, that I give in support.

15          THE COURT: Okay. Yes, sir.

16          MR. HOYLE: Your Honor, briefly. In  
17          response, Justin Nicholas Miller was 28 years  
18          old when he died. To the explanation that we  
19          have heard today about other voir dire panel  
20          being close in age from my friend Mr. Lovell,  
21          after hearing that, we started looking at the  
22          jurors that were not struck. I would  
23          respectfully direct the Court's attention to  
24          strike Juror 20, age 30. Alyson Belcount,  
25          exactly 28. And my notes, she sits as a pet

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1           sitter.

2           Going to the alternate explanation,  
3           insufficient work history, i.e., server in a  
4           restaurant, is somehow a reason to strike them  
5           from the jury, as a race-neutral reason, we would  
6           respectfully submit that juror number 30,  
7           Ms. Belcount, would cast doubt on those reasons.

8           MR. LOVELL: Your Honor, I struck her.

9           THE COURT: Yes. Any other arguments?

10          MR. HOYLE: One moment, Your Honor.

11          THE COURT: All right.

12          MR. HOYLE: Beg the Court's indulgence,  
13          Your Honor.

14          THE COURT: All right. All right.

15          (Pause.)

16          MR. HOYLE: Your Honor, I certainly stand  
17          corrected in response to the juror number 30,  
18          but direct the Court's attention to Juror 348 on  
19          the strike sheet listed as juror number 8, I  
20          believe, a Caucasian female. Occupation, ice  
21          cream server. I believe that that level of work  
22          experience would be equivalent to others that  
23          Mr. Levell has stated his reasons for strikes.

24          THE COURT: What is her age?

25          MR. HOYLE: She was 46, Your Honor.

## JURY QUALIFICATION

1 THE COURT: All right. Anyone else that  
2 you want to point out? I just want to make sure  
3 that I hear you.

4 MR. HOYLE: Again, I beg the Court's  
5 indulgence.

6 THE COURT: All right.

7 (Pause.)

8 MR. HOYLE: Also direct the Court's  
9 attention to juror number 30. I apologize, Your  
10 Honor, 31 who is on the strike sheet as number  
11 16, Karl L. Bergman, white male. It lists his  
12 age at 37 and he is a taxi driver and a writer.

13 THE COURT: Any others?

14 MR. HOYLE: Not at this time, Your Honor.

15 THE COURT: Any response?

16 MR. LOVELL: Your Honor, Ms. Steinhebel,  
17 348, general manager of the Hilton Head Island  
18 Ice Cream Company, 46. Her education is  
19 different than those that we talked about.

20 THE COURT: Different how?

21 MR. LOVELL: She is a general manager, as  
22 opposed to the server. That was the thing. And  
23 age is also an issue there. And Mr. Bergman  
24 says that he's a taxi driver and a writer and  
25 waiter. He is 56 years old, not 30 years old,

## JURY QUALIFICATION

1 Your Honor. And he has a BA.

2 THE COURT: Anything further?

3 MR. HOYLE: No, Your Honor.

4 THE COURT: Very well. Very well. Of  
5 course, we know that when there is a Batson  
6 challenge and there's reasons given, we look to  
7 Batson versus Kentucky analysis to determine  
8 whether or not the folks who are seated who had  
9 similar characteristics of those who were  
10 struck, and there appear to be three, if you  
11 will, recurring things on behalf of the  
12 Defendant: Education and age and employment.  
13 And under the Batson versus Kentucky analysis, I  
14 do not believe that -- well, let me reverse  
15 that.

16 While there has been a challenge, I think  
17 that the challenge is unsuccessful because I do  
18 believe that the Defendant has articulated  
19 race-neutral reasons for the strike. And under  
20 the Batson versus Kentucky analysis it appears  
21 that that is consistent throughout the striking of  
22 the jury in its entirety. I would respectfully  
23 deny the motion, noting the exceptions.

24 MR. HOYLE: Thank you, Your Honor.

25 THE COURT: Anything with regard to the

## JURY QUALIFICATION

1 Plaintiff?

2 MR. HOYLE: Nothing with regards to the  
3 jury?

4 MR. LOVELL: Nothing, Your Honor.

5 THE COURT: Very well. Bring them back in.

6 (Jury enters the courtroom at 3:55 p.m.)

7 THE BAILIFF: All jurors present, Your  
8 Honor.

9 THE COURT: Thank you very much. Let's  
10 have a jury please.

11 THE CLERK: Juror 199, Joshua King.

12 Juror 298, Debra Regecz.

13 Juror 348, Shelly Steinhebel.

14 Juror 213, Dan Lawrence.

15 Juror 64, John Chechire.

16 Juror 34, James Blaine.

17 Juror 232, Dorothy Mashburn.

18 Juror 258, Kiesha Mitchell.

19 Juror 78, Kevin Courtney.

20 Juror 31, Karl Bergman.

21 Juror 274, Catherine Onorato.

22 Juror 153, Robert Gwinn.

23 Our first alternate is Dorinda Ballenger;  
24 juror number 24.

25 Our second alternate, Juror 283, Richard

## JURY QUALIFICATION

1 Patti.

2 And our third alternate, Juror 141, Michael  
3 Glover.

4 THE COURT: All right. Ladies and  
5 gentlemen, those of you who are now in our  
6 audience, I'm going to ask you to please step  
7 back across the hall, back to the jury assembly  
8 room for just a moment. Our clerk will be in in  
9 just a moment.

10 (Panel exits the courtroom at 4:00 p.m.)

11 THE COURT: Ladies and gentlemen, we are  
12 not going to begin the trial today. We are  
13 going to begin the trial in the morning at 9:30.  
14 In the morning at 9:30. Now, there is some  
15 instruction that I do need to give to you and I  
16 want to take just a few moments to do that. And  
17 I'll begin with seating assignments. You three  
18 are our alternates, you have the entire row all  
19 to yourselves. If y'all want to change it up  
20 and move up and down, enjoy. But I do need you  
21 to stay on that row just so I can keep up with  
22 you as our alternates. So, if you would do that  
23 for me I would be most grateful to you in that  
24 regard.

25 Now, those of you, the rest of you, the rest

## JURY QUALIFICATION

1 of our 12, we have no assigned seating, except for  
2 one seat and that is this seat, yes, sir. That is  
3 the seat of the presiding juror. You look like a  
4 very fine presiding juror. You look prepared.  
5 The first thing that he did, pull out that  
6 notebook and pull out that pen ready to go. I  
7 think you would make an excellent presiding juror,  
8 if you will. I'll tell you what your additional  
9 tasks are. I promise that you will be able to  
10 handle it.

11 The first one, once the jury has concluded  
12 the deliberation, at the conclusion of the case,  
13 you write the verdict on the verdict form. That  
14 is pretty simple. You can handle that one. You  
15 will, during those deliberations, you will preside  
16 in the jury room just to be sure that everybody  
17 gets a chance to talk. That is it. No more or  
18 less. Everybody gets a chance to talk, that is  
19 it. You don't control the deliberations. Don't  
20 control the discussions. You let it go and be  
21 sure that everybody has a chance to talk.

22 And thirdly, in the event that the jury needs  
23 to communicate with me, for whatever reason, take  
24 that down in writing and have the bailiff to give  
25 that to me. And your number is?



## JURY QUALIFICATION

1 FOREPERSON: 213, excuse me.

2 THE COURT: Okay. And if you will do that  
3 for me, I would be so grateful. And you can  
4 keep that seat throughout the trial. Ladies and  
5 gentlemen, we have to talk about a few matters  
6 before you leave me this evening, and all of  
7 you, y'all are so smart. Everybody is bringing  
8 out pen and paper. We will provide that for you  
9 tomorrow. We will provide note paper and  
10 writing implements for you to take notes. And  
11 there's a -- and I'll give you some instruction  
12 about the taking of notes. So, you just -- you  
13 can hold up today, there will not be anything  
14 that I tell you today that I won't repeat eight  
15 times first thing in the morning and you will be  
16 sick of me telling you in the morning by the  
17 time the trial starts. You will say, We have  
18 got it, stop.

19 What I'll tell you about taking the notes --  
20 really, two things. I have talked a little bit  
21 about the bailiff taking the notes and y'all will  
22 be able to take notes. The James Bond movie, For  
23 Your Eyes Only, I'll tell you that your notes are  
24 for your eyes only. We will talk about that.  
25 That will be tomorrow.

## JURY QUALIFICATION

1           Here is what I want to tell you about  
2           tonight. And I have to tell you that I had a  
3           very -- I had an experience recently in court and  
4           I don't think that the juror intended anything  
5           nefarious, but I need to be sure that I have  
6           served my duty both to you and to these litigants  
7           and to our system of justice and made absolutely  
8           clear to you certain things. Number one, you must  
9           not discuss this matter or allow anyone to discuss  
10          it with you until I tell you it is time for you to  
11          begin your deliberations. I want to state that as  
12          clearly as I know how.

13          You cannot talk about this case. You cannot  
14          talk about what you are hearing. You cannot talk  
15          about the lawyers. You cannot talk about anything  
16          that you are listening to and hearing. You  
17          cannot. It is important. You can't even talk  
18          about it a little bit. Let me tell you why that  
19          is so, tomorrow morning you will be sworn in as a  
20          juror in this case and there will be no one who  
21          will be allowed to listen to the evidence and make  
22          the findings of fact in this case but you. Under  
23          our way of life, under our system of justice, you  
24          are the only, the sole, the exclusive finders of  
25          the facts. It is absolutely critical in that role

## JURY QUALIFICATION

1       that you are able to listen to all of the evidence  
2       that is presented to you open-mindedly and that  
3       you not make up your mind about anything until you  
4       have heard everything. I cannot tell you how  
5       absolutely critical that is to your duty as  
6       jurors.

7               What we know from over 200 years of trying  
8       cases is that when somebody begins to talk about  
9       something they cannot help but begin to form an  
10      opinion about it. You cannot form an opinion  
11      about anything until you have heard everything.  
12      You must listen open-mindedly to all of the  
13      evidence that is presented to you. Evidence will  
14      come in one piece at the time.

15             If you begin to talk about it, then you will  
16      begin to take a position. You will begin to be  
17      able to form an opinion. You will be in a place  
18      to do that. I don't want you to be in a place to  
19      do that. I want you to be able to listen  
20      open-mindedly to everything. That is the reason  
21      for the instruction not to discuss this case with  
22      anyone, with your family, no fluff talk about the  
23      case, Oh, come on, just a little bit. No pillow  
24      talk. You cannot talk to your family. You cannot  
25      talk to your friends. You cannot talk to your

## JURY QUALIFICATION

1       fellow jurors walking in. You cannot talk about  
2       the case.

3               You can talk about a lot of things. I hope  
4       tomorrow morning you are able to talk about the  
5       Yankees having been successful and won, beat the  
6       Astros tonight. That would be a wonderful thing  
7       to be able to talk about rather than poor old  
8       red-rimmed eyed judge becuae the Yankees lost.  
9       But you cannot talk about this case. You cannot.  
10       I had a problem with that with one of my jurors  
11       very recently and I'm very sensitive about it. So  
12       please, ladies and gentlemen, you cannot talk  
13       about this case.

14              It's going to get weird at times, but you  
15       cannot discuss this case or anyone that has  
16       anything to do with it. It is absolutely critical  
17       that you adhere to that instruction. Here is the  
18       next instruction that is absolutely critical: You  
19       cannot do any, none, zero, zip, zip investigation.  
20       Don't listen to anything about this case. Don't  
21       go to the Internet to do any kind of research  
22       about this case. If you hear a funny word and you  
23       want to go look up that word, do not look up that  
24       word. Do not.

25              You must, let me say that once more, you must

## JURY QUALIFICATION

1       receive all of the information from which you will  
2       make up your minds here in court while court is in  
3       session. If you were to go to the Internet this  
4       case has to be thrown away. If you were to look  
5       at the newspaper, go to the Internet, read  
6       anything on the Internet about this case, go to  
7       the television or the radio and receive  
8       information from the radio, the television, the  
9       Internet, this case has to be scrapped and it's  
10      contempt of court.

11           It is not -- it is a terrible thing to have  
12      happened. So, please be in mind, no Columbo. You  
13      know, we have become information sponges and it's  
14      readily available on our telephone, on our Ipads,  
15      on our tablets, on our computers. It's become a  
16      normal function, almost like breathing to go -- if  
17      you have a question, to go grab it from the  
18      Internet. You cannot do it about this case. If  
19      you do it about this case, then it's over. That  
20      is how big of a deal it is. It doesn't matter  
21      where we are in it. We could be at the end of it.  
22      Beyond the end of it. It has to be done, it has  
23      to be thrown away. So, please, please adhere to  
24      the admonition, do not discuss this matter.

25           Do not allow anyone to discuss it with you.

## JURY QUALIFICATION

1 Do not do any research. Do not listen to  
2 anything. Do not read anything about this case.  
3 Do not do any research about this case. Radio,  
4 television, newspaper, Internet. You have to  
5 receive all of the information here in court while  
6 court is in session.

7 Now, anybody work at night? Not tonight.  
8 Not during this trial. And the reason for that is  
9 that it isn't fair to you and it isn't fair to  
10 these litigants for you to try to work all night  
11 and pay close attention during the day. Every  
12 once in a while there might be a manager or  
13 employer that is not happy about that. Just get  
14 me a name and phone number, I'll be happy to have  
15 a little talk in the morning with whomever might  
16 be concerned about that. I have to have you  
17 rested at night so you can pay attention during  
18 the day.

19 So now, cell phones, tablets and other  
20 communication devices, you must leave your cell  
21 phones, your tablets or other device which is  
22 capable of communication outside of the courtroom.  
23 In other words, it can have Internet access, you  
24 must leave that somewhere other than the  
25 courthouse. You cannot have a cell phone, tablet,

## JURY QUALIFICATION

1       Ipad, computer with you while you are serving on  
2       the jury. The reason for that is we had a case  
3       several years ago, the jury was actually in  
4       deliberations, they reached a point where they had  
5       to discuss it and one of the jurors said, Oh, I'll  
6       phone a friend. They pulled out the cell phone,  
7       phoned a friend. That information was received  
8       and the entire trial had to be scrapped. That is  
9       the reason why we now have an admonition, no cell  
10      phones, tablets or other communication devices are  
11      allowed with you.

12             Now, having said that, we are so tethered to  
13      these things, if you forget and realize that you  
14      are in the courthouse and have your cell phone,  
15      let the bailiff know and they will take possession  
16      of it and take it until the morning or mid lunch  
17      and then you can take it away from the courthouse.  
18      And do not take it with you while you are serving  
19      on the jury. Do not think that you can turn it  
20      off and put it in your pocket book. Gremlins will  
21      turn it on and it will ring right in the middle of  
22      court. You know that will happen. And if you  
23      find out that that happens, please let us know.  
24      And you cannot have cell phones or other devices  
25      with you while serving on the jury. If there are

## JURY QUALIFICATION

1 questions about this or other parts of the  
2 discussion, I want you to let me know. Tell your  
3 presiding juror and he will write it down and let  
4 me know.

5 I must be absolutely clear. You cannot talk  
6 about this case. You cannot talk about this case  
7 with anyone. You cannot do any investigation.  
8 You cannot read anything, listen to anything about  
9 this case. Radio, television, newspaper,  
10 Internet. You have to receive every piece of  
11 information on which you will make up your minds  
12 here in court while court is in session.

13 You are going to go home tonight and no doubt  
14 someone is going to be curious about what have you  
15 been up to today. It's been perfectly fine to  
16 say, I showed up for jury summons, I've been  
17 selected to serve on a jury. The next question,  
18 civil case or criminal case? The most that you  
19 can say, It is a civil matter as opposed to a  
20 criminal matter. That is as much as you can talk  
21 about. You can't talk about the rest of it. I  
22 don't want anyone upset with my jurors. You put  
23 it on the judge. Say, The Judge has instructed me  
24 I can't talk about it. Put it on me. Not you.

25 You must not allow anyone to discuss this



## JURY QUALIFICATION

1 matter with you. And it's very difficult to keep  
2 that information, but it has a way of working its  
3 way back to me. So, please, please, please adhere  
4 to my admonitions. They are for your ability to  
5 serve on this jury, as I am so grateful to you, as  
6 are our litigants today, so grateful for you being  
7 here.

8 So in just a moment I will ask you to go to  
9 your jury room and say, 'Hi jury room, and then the  
10 bailiffs will go over how to come and go from your  
11 jury room in the morning and then we will  
12 reconvene in the morning at 9:30.

13 Let me give you an overview of what will  
14 happen when you arrive. You will be sworn in as a  
15 juror in this case. I'll then give you  
16 preliminary remarks. I'll then give you a very  
17 brief outline of how we will be proceeding, just  
18 so you can know in outline form where we are in  
19 the trial. Then we are going to get right into  
20 the trial in this case.

21 So, ladies and gentlemen, as I conclude my  
22 remarks today please remember to not discuss this  
23 matter or allow anyone to discuss it with you.  
24 Please do not investigate, please do not read  
25 anything, listen to anything about this matter,

## JURY QUALIFICATION

1 radio, television, newspaper, Internet. You must  
2 receive all of the information for which you will  
3 make up your minds here in court. Have a  
4 wonderful evening. I can't wait to see you in the  
5 morning at 9:30.

6 (Jury exits the courtroom at 4:15 p.m.)

7 THE BAILIFF: The jury is clear, Your  
8 Honor.

9 THE COURT: All right. We have motions.  
10 Let me ask this question: Have you had an  
11 opportunity -- have you all had an opportunity  
12 to confer with regards to all of your motions?

13 MR. HOYLE: In all candor, Your Honor, no,  
14 we have not.

15 THE COURT: All right. Okay. Well, have  
16 you read each other's motions?

17 MR. HOYLE: Yes, Your Honor.

18 THE COURT: Yes, and yes.

19 MR. MACKELCAN: Yes.

20 THE COURT: Okay. How do you feel about  
21 them? How do you -- we can proceed in one of  
22 two ways. If you think that you can make  
23 substantial, and I really do mean substantial  
24 progress, I would propose to give you the  
25 balance of the day to do that. Otherwise, then

## PRE-TRIAL MOTIONS

1       we would start at 9 in the morning, but that  
2       would only give us 30 minutes to handle what you  
3       cannot agree to. Otherwise, we will just start  
4       plowing through them. Plaintiff's position?

5               MR. HOYLE: I would respectfully suggest  
6       that Mr. MacKelcan and I talk for five minutes  
7       and then have a comfort break. Five to discuss,  
8       five comfort break, and then advise Your Honor  
9       of where we are. And if we can't agree,  
10      perhaps, come up with a protocol of the most  
11      logical way to proceed this afternoon.

12               (Brief recess. )

## PRE-TRIAL MOTIONS

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 10th day of March, 2016.

/s/ Mona L. Manley

---

MONA L. MANLEY  
Official 14th Circuit Court Reporter  
(850) 893-6662  
mmanley@scccourts.org

1                   IN THE COURT OF COMMON PLEAS IN THE  
2                   FOURTEENTH JUDICIAL CIRCUIT, IN  
3                   AND FOR BEAUFORT COUNTY, SOUTH CAROLINA

4       Rebecca Delaney, as Personal Representative of the  
5       Estate of Justin Miller,

6                   Plaintiff,

7       vs.

CASE NO. 2012-CP-07-03782

8       CasePro, Inc,

9                   Defendants.

10       -----/

11                   PRE-TRIAL MOTIONS

12                   VOLUME 3

13

14                   \*    \*    \*

15       TRIAL BEFORE:                   Honorable Diane Goodstein

16       DATE:                   October 6, 2015

17       TIME:                   Commenced at 9:30 a.m.  
18                               Concluded at 5:30 p.m.

19       PLACE:                   Beaufort County Courthouse  
20                               Beaufort, South Carolina

21       REPORTED BY:               Mona Whiddon, Stenographer

22

23

24

25

1 APPEARANCES:

2 REPRESENTING THE DEFENDANT, CasePro:

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4 Dennis Gary Lovell, Jr, Esquire  
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9 REPRESENTING THE PLAINTIFF(S):

10 Thomas David Hoyle, Esquire  
11 Temitope Olamide Leyimu, Esquire  
12 William Christopher Swett, Esquire  
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16 and

17 Crystal Lynn Castleberry, Esquire  
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19 3712 Swallowtail Drive  
20 Morgantown, WV 26508

21

22

23

24

25

## PRE-TRIAL MOTIONS

1 PROCEEDINGS

2 THE COURT: All right. And what --

3 MR. HOYLE: Judge, this may shock you, but we  
4 did not simplify matters real much. But we did  
5 agree to a proposed protocol.

6 THE COURT: Okay.

7 MR. HOYLE: There are two motions that  
8 Mr. MacKelcan would like to have heard first and  
9 then at which time we will proceed with the  
10 Plaintiff's pretrial motions and then the, what I  
11 call the kitchen sink, Defendant's pretrial  
12 motions. And then if time permits discuss the page  
13 and line --

14 THE COURT: Okay.

15 MR. HOYLE: -- designations with respect to  
16 the depositions.

17 THE COURT: Okay. Great. All right. Good.

18 MR. MACKELCAN: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. MACKELCAN: All right. Your Honor, the  
21 first motion is the Rule 42(b) motion for separate  
22 trials that Defense has filed. We respectfully  
23 request that the Court order separate trials for  
24 liability and damages, which is within your  
25 discretion under Rule 42(b). I know that Your

## PRE-TRIAL MOTIONS

1 Honor is new to this case, and that it's been going  
2 on for a long time; but it is really the perfect  
3 case for separate trials.

4 This is a case where there is no overlap in  
5 the liability witnesses with the damages witnesses.  
6 It's a case where my client's involvement with  
7 Calvin Hunt began at 2:17 on -- well, let me back  
8 up a second.

9 To the extent that Your Honor finds that my  
10 client is responsible for the actions of the ER  
11 staff, starts at 2:17. Ends at about 4:00.  
12 Everything that happened after that really doesn't  
13 have anything to do with the care provided to  
14 Calvin Hunt in the emergency room.

15 And when you start to look at the evidence  
16 that's going to come or potentially come in, it's  
17 going to be at least proposed, we've got a dashcam  
18 video of the fire truck that shows Mr. Miller being  
19 hit by the fire truck. It shows a lot of other  
20 incidents. Highly prejudicial to the Defendant.  
21 And really doesn't have any bearing on liability  
22 whatsoever.

23 There's been 9-1-1 calls that have been  
24 proposed. Similarly, that's all after everything  
25 has been done with CasePro. Photographs of the



## PRE-TRIAL MOTIONS

1 Plaintiff. All of the damages witnesses from the  
2 Plaintiff and her family members, medical  
3 providers. Those are only damages witnesses. And  
4 then we have all of the witnesses that are related  
5 to the hospital.

6 You know, there's -- there's no disagreement  
7 as to what happened factually from the moment  
8 Calvin Hunt left the emergency room -- well, I take  
9 that -- there's some that we don't know, so I guess  
10 it's not even a disagreement. There's a gap in  
11 time there where we don't exactly know what  
12 happened from the time he walked out with Mr. Ray  
13 outside, and then we know he ran through the guard  
14 gate. So between that we don't know exactly what  
15 happened. But we don't have a difference of  
16 opinion, we just don't know.

17 But after he runs out the guard gate  
18 there's -- you know, we know what happens. He was,  
19 you know, running around. He got into a fire  
20 truck. He drove the fire truck down the road,  
21 crashed into a bunch of cars, swung the fire truck  
22 around and drove it down the road and directed the  
23 fire truck into Mr. Miller. And it's -- it's a  
24 terrible tragedy. And, you know, all of that  
25 highly emotional testimony and evidence related to

## PRE-TRIAL MOTIONS

1 damages really don't have anything to do with the  
2 care provided by my client's employees in the  
3 emergency department. It doesn't go to Calvin  
4 Hunt's mental state. I mean, this -- this is a --  
5 that period is over. There's a temporal difference  
6 there.

7 And again -- but the main thing is there's no  
8 overlap in witnesses. It's distinct and the  
9 prejudicial effect of the damages testimony is  
10 extremely high here of the liability. Thank you.

11 MR. HOYLE: Your Honor, if I may hand up a  
12 written opposition to this motion.

13 THE COURT: Thank you.

14 MR. HOYLE: Your Honor, first, I would note  
15 that the case law in this case state is that a  
16 trial should only be bifurcated if issues are so  
17 distinct that a trial of each alone would not  
18 result in injustice. That's our Court of Appeals  
19 in the Creighton case cited in our papers  
20 334 S.C. 96. I also note the Professor Flannigan  
21 states in his treatise that "issues are not  
22 distinct when the same evidence is admissible on  
23 both issues."

24 I want to go back to the very concept of  
25 negligence that we all learned in law school. My

## PRE-TRIAL MOTIONS

1 recollection of negligence and the burden that the  
2 Plaintiff has to prove with respect to each and  
3 every element of negligence is that there's  
4 something called proximate cause with respect to  
5 negligence. We have to have the burden to prove  
6 that the negligence, the errors, acts and omissions  
7 of these Defendants through their agents and  
8 employees was a but for cause and fact of Justin  
9 Nicholas Miller's death.

10 I think it's important to note Mr. MacKelcan  
11 said that Calvin Hunt left the ER around 4:00.  
12 That's true. My client's son was dead at 4:17 p.m.  
13 in the afternoon, so about 15 minutes later, less  
14 than the time it takes to cook some grits. The  
15 issues attendant to what Calvin Hunt did in that  
16 remaining 20 minutes go absolutely to his mental  
17 state.

18 The State of South Carolina in this very  
19 courtroom charged him with murder, and three  
20 psychiatrists came in and testified that he lacked  
21 the ability to know the difference from moral right  
22 and moral wrong and legal right and legal wrong.  
23 They said he did not have the capacity to conform  
24 his conduct to legal right and legal wrong. And  
25 the Court of General Sessions for this county found

## PRE-TRIAL MOTIONS

1       by preponderance of the evidence that because of  
2       that mental defect he was not guilty by reason of  
3       insanity.

4             The mental state of Calvin Hunt is directly at  
5       issue in this case. He was brought to the Naval  
6       Hospital around 2:00 in the afternoon that fateful  
7       Friday, because he hadn't been taking his medicine  
8       and his grandmama said he wasn't acting right. And  
9       he gets brought to the emergency room, specifically  
10      the emergency room at the Naval hospital, after he  
11      tells a nurse somewhere else in the hospital that  
12      he has thoughts of hurting himself and he begins  
13      moaning and rocking back and forth.

14            Within the four walls of the emergency room he  
15      tells a nurse employed by CasePro and a doctor  
16      employed by CasePro that he has thoughts of hurting  
17      others. They write that in the records, thoughts  
18      of hurting others. And despite that, they still  
19      give him permission to leave.

20            I think that the unusual events that follow  
21      once he leaves the Naval hospital, the man taking  
22      off his clothes -- there's evidence on the 9-1-1  
23      calls from people seeing a naked man running  
24      through the streets of Beaufort County. There's  
25      all the calls of the carnage being laid down Ribaut

## PRE-TRIAL MOTIONS

1 Road as this fire truck hits five different  
2 vehicles before ultimately crossing the center  
3 line. Actually the fire truck crosses three lanes  
4 of traffic to make contact with my client's son and  
5 leading to his injuries and death.

6 Those issues directly reflect on the mental  
7 state of Calvin Hunt. Somebody who was within  
8 their emergency room -- was the only patient for  
9 some two hours. Some two hours he's the only  
10 patient there. So, certainly the fact that he says  
11 that he's a danger to himself and others and then  
12 20 minutes later, less than 20 minutes later,  
13 somebody is dead, I think directly goes to the  
14 issue of proximate cause.

15 Every case is like this. There's no reason to  
16 separate the general negligence from the damages.  
17 There is exactly going to be some overlap piece.  
18 There's a survival claim in addition to wrongful  
19 death. There will be testimony, hopefully  
20 tomorrow, in this courtroom about that. There are  
21 going to be issues related to whether or not it's  
22 foreseeable that Calvin Hunt did what he did.

23 There is going to be testimony in this case as  
24 to the manner and cause of my client's son's death.  
25 And so all of those things go directly to

## PRE-TRIAL MOTIONS

1 Plaintiff's negligence claims, specifically the  
2 proximate cause responsibility that we have to  
3 prove by preponderance of the evidence.

4 So I respectfully disagree with the assertion  
5 that the conduct of the case of employees can be  
6 looked at in a vacuum. Because the evidence here  
7 is relevant to both issues of both liability and  
8 damages. They overlap. We respectfully submit  
9 that the case law in this state says that  
10 bifurcation is inappropriate and we would oppose  
11 this motion to do so.

12 One final thought, Your Honor. I've been  
13 sitting here, it's now 20 minutes to the hour of  
14 five, since about 9:00 this morning. It took us a  
15 good long while to strike this jury. I do not know  
16 how it would promote judicial efficiency to further  
17 prolong what's going to likely be a trial that goes  
18 into a second week by bifurcating liability and  
19 damages.

20 Truthfully, the only witness that it may call  
21 out in my case-in-chief is Mrs. Delaney. I still  
22 think with respect to my burden to show by  
23 preponderance of the evidence that any errors and  
24 omissions by these folks were a proximate cause of  
25 my client's death, I would still need testimony

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1 with respect to what happened outside of guard gate  
2 once Calvin Hunt left the Naval hospital.

3 THE COURT: How so? Tell me a little more  
4 about that. In other words, you say that -- that  
5 there is a differentiation of witnesses between the  
6 liability and damages. So set --

7 MR. HOYLE: Well, I think -- I think this goes  
8 directly to foreseeability. We had an extended  
9 summary judgment hearing in this case, as some of  
10 the courthouse personnel may recall. I think it  
11 lasted over two hours. And the case the Plaintiffs  
12 primarily relied on is the Hardy case from the  
13 South Carolina Supreme Court.

14 And, Judge to me, in all candor,  
15 foreseeability is a big issue. Because I think a  
16 lot of people when they first hear these facts  
17 would say, well, gosh, how in the world could  
18 anybody have ever foreseen that. And I think when  
19 you know what was known in the emergency room that  
20 day or what information they also had available to  
21 them in the form of Calvin Hunt's records. For  
22 example, he had persistent thoughts, nightmares and  
23 memories of a family member running over another  
24 family member with an automobile. It gets a little  
25 more connected.

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1           And so I think that it is absolutely essential  
2           for my case-in-chief with respect to liability to  
3           be able to call Trooper Perry from the highway  
4           patrol to talk about the accident reconstruction of  
5           the MAIT team, to talk about the various activities  
6           that he took with this fire truck.

7           I certainly think with respect to the mental  
8           state of Calvin Hunt, I think having 12 jurors  
9           listen to the 9-1-1 calls and the present sense  
10          impressions from various people along Ribaut Road  
11          from that Friday afternoon will give them a sense  
12          that, perhaps, this wasn't some calm, cool,  
13          collected individual. Perhaps this really was  
14          somebody in need of help and intervention.

15          Because, again, it's not like he left the ER  
16          and did this five days later or even five hours  
17          later. From the time he left the Naval hospital to  
18          the time he was driving the fire truck was a matter  
19          of minutes. I think our best estimate is actually  
20          less than five minutes. So I think there is that  
21          necessary connection between the two.

22          THE COURT: Okay.

23          MR. MACKELCAN: Your Honor, Mr. Hoyle said  
24          "every case is like this." I can tell you every  
25          case is not like this. This is an unbelievably



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1 unique case as a result of just factually. It's  
2 legally been incredibly unique because of the way  
3 that the Plaintiff has chosen to plead the case  
4 working around the medical malpractice laws,  
5 working around the contract. It's unique because  
6 of the nature of a relationship between a  
7 government contractor and health care. So this is  
8 the furthest thing from "like every other case."

9 But I think also that he referenced the  
10 criminal case, and you're going to hear from us on  
11 that as well. The key on the criminal case was not  
12 guilty by reason of insanity at the time of the  
13 alleged acts. The alleged acts all happened off of  
14 the Naval base. There's no dispute of the timing  
15 of the events, we recognize that.

16 But there's also no dispute factually that  
17 Mr. Hunt at all times when he was in the emergency  
18 room was with Mr. Ray, the Veteran Affairs officer,  
19 who he came to the Naval hospital with and was with  
20 the entire time. He was there in some level of  
21 official looking capacity. He remained calm and  
22 cooperative the entire time. He was never anxious  
23 or agitated with anybody. And they calmly walked  
24 outside after having been there for that amount of  
25 time, and he did so clothed.

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1           Okay. So, you know, to say that this is --  
2           that it's the same, clearly something happened to  
3           this guy. I mean, I think we all recognize that.  
4           But the question is, you know, is it relevant to  
5           the liability of our medical providers what all of  
6           these things that he did later, when the evidence  
7           doesn't suggest that any of that was going on in  
8           the emergency room?

9           And the criminal case, of course, was based on  
10          a capacity evaluation order by Judge Mullen, which  
11          is privileged material. Interestingly, it's a  
12          40-page document of which dozens of people are  
13          interviewed. Dr. Jansen, Joe McDonald and Janice  
14          McDonald were not interviewed, which we find very  
15          interesting that that would be a 40-page document  
16          determining somebody's mental capacity and they  
17          were not even asked any questions.

18          So I think that that -- first of all, that  
19          document is going to be -- is privileged and  
20          inadmissible and, again, we'll get to that later.  
21          But to the extent that any of the outcome of the  
22          criminal case is just not relevant to this case  
23          and, again, highly prejudicial. It's a different  
24          standard. It's based on different information.

25          Mr. Hoyle also mentioned calling J.L. Perry,

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1 the accident reconstructionist. And I think that's  
2 kind of exactly my point is, what does an accident  
3 reconstruction or highway patrolman -- what's the  
4 relevance? What's the purpose? How is there  
5 probative value that outweighs the prejudicial  
6 effect for him to testify about that when we can  
7 keep them separate, have the liability issues as to  
8 proximate cause. Certainly proximate cause is a  
9 major issue, I mean, there's no question. But --

10 THE COURT: But I don't think they can prove  
11 proximate cause without going into the temporal  
12 relationship between his time at the hospital and  
13 the time of these events and the progression of  
14 these events. How can they prove proximate cause?

15 MR. MACKELCAN: Your Honor, I think you're  
16 asking the wrong person. I don't know that I've  
17 had that many Plaintiff's cases so I --

18 THE COURT: But are you trying to say it's  
19 possible to do that. You're asking us to prove  
20 proximate cause without proving proximate cause.

21 MR. MACKELCAN: Well, I think that there are  
22 certain aspects --

23 THE COURT: You're not going to stipulate it,  
24 right?

25 MR. MACKELCAN: There are certain aspects of

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1        what would be a part of that that don't need to be  
2        in. Like a -- like the fire truck video, the  
3        accident reconstruction, testimony about damages,  
4        family members, all of that kind of thing.

5            I understand that he has to prove a causal  
6        link, but it doesn't need to involve everything  
7        that is proposed. And it may be that we would have  
8        to deal with that from an evidentiary standpoint  
9        once the separate trials are -- if Your Honor  
10       orders separate trials, then we deal with that,  
11       hey, how is that going to work. Because I think  
12       that it can work.

13           I think the other point, then, my last point,  
14        was efficiency. If you look at the case law that  
15        we cited, separate trials actually is more  
16        efficient. This is a case where if you get a  
17        defense verdict to liability we could go home this  
18        week, maybe, if that happened.

19           This is always a case where Judge Norton in  
20        Federal Court has dismissed this exact case. The  
21        brother of the decedent filed a case in federal  
22        court and -- as well as one of the car wreck  
23        victims, and he considered that at summary judgment  
24        and dismissed the case based on -- purely based on  
25        respondeat superior, that under the terms of the

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1 contract and the nature of the relationship between  
2 the government and CasePro that CasePro was not  
3 responsible for the actions of their health care  
4 workers while they were at work at the Naval  
5 hospital.

6 So from an efficiency standpoint, I'm not  
7 suggesting that Your Honor is going to do that, but  
8 it certainly is a possibility. And so for those  
9 reasons I think, actually, efficiency is supported  
10 by separate trials in this case.

11 MR. HOYLE: Judge, just very briefly in  
12 response. I'll work backwards.

13 THE COURT: Okay.

14 MR. HOYLE: This was Plaintiff's memorandum in  
15 opposition to the summary judgment in this court.  
16 I'm asking my paralegal to find the transcript from  
17 a very lengthy hearing in this courtroom in front  
18 of Judge Mullen. Judge Mullen denied the motion  
19 for summary judgment on the exact same basis  
20 Mr. Mackelcan articulated. It's a lengthy  
21 transcript. I remember being here for a while and  
22 then subsequently denying a motion to reconsider.  
23 I don't represent the folks who had those cases in  
24 Federal Court. It was an entirely different record  
25 that Judge Norton was considering. It's an

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1       entirely different standard that he has to apply as  
2       a Federal Court Judge as opposed to a Judge of the  
3       Court of Common Pleas since we have a scintilla  
4       standard after Hancock v. Mid-South Management. So  
5       I would respectfully suggest that that's a red  
6       herring that my friend Mr. MacKelcan is  
7       referencing.

8               But going back to this issue. Asking the  
9       Plaintiffs to try a case in a vacuum where you only  
10      look at a certain narrow time period before the  
11      harm to the Plaintiff actually occurs. And then  
12      saying, well, gosh, I don't know how they're going  
13      to prove proximate cause, that's -- that's their  
14      problem, Judge.

15             But I do want to respond to a few things that  
16      were said. There's conflicting evidence in the  
17      record at this point. And, again, there's a lot in  
18      the records, given the fact that we've had  
19      extensive briefing in this case, as to whether or  
20      not Calvin Hunt was calm or not calm. One of the  
21      individuals described him as agitated. Another  
22      person said, I was afraid to be alone with him.  
23      Their own employee, Nurse Janice McDonald, in a  
24      handwritten statement -- that didn't get produced  
25      to me until after I'd taken her deposition, but

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1       neither here nor there, we'll deal with that on  
2       cross -- said that she didn't want to let him get  
3       between her and the door. So there's some issues  
4       as to how calm Calvin Hunt was actually there that  
5       day.

6             And, again, going back to the mental state.  
7       There's been some discussions about Officer -- or  
8       Trooper Perry. I think the path of the fire truck  
9       is particularly relevant because it's not like he  
10      accidentally clipped -- and I apologize because  
11      Ms. Delaney's sitting here -- it's not like he  
12      accidentally clipped a pedestrian. He  
13      intentionally did what he did. He may have lacked  
14      the mental capacity to know what he was doing, but  
15      it was an intentional act, which it isn't a  
16      surprise, because he told medical providers less  
17      than two hours earlier that he wanted to go hurt  
18      people.

19            Dr. Jansen, their doctor, testified at his  
20      deposition of thoughts of hurting others. I said,  
21      what does that mean to you as a board certified  
22      emergency room physician. He looked at me and he  
23      said, I think that's self-explanatory. I said,  
24      don't need to go to medical school to know what it  
25      means when somebody says they want to hurt others.

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1 He said, no, not really. Another medical doctor in  
2 this case, Dr. Hendelman, a psychiatrist that  
3 Dr. Jansen called on the telephone as a consultant,  
4 she told Dr. Jansen that it was, quote, obvious.

5 Obvious that this patient needed to be  
6 admitted. Dr. Jansen wrote that in the medical  
7 records after he learned later that afternoon that  
8 there was a dead 28-year-old on Ribaut Road. He  
9 actually went and typed up a memo and he actually  
10 put in that memo that psychiatrist Hendelman told  
11 me it was obvious the patient needed to be  
12 committed.

13 So I think bifurcation doesn't help anything.  
14 It doesn't promote efficiency. And I think it  
15 squarely -- it prejudices the Plaintiff in the  
16 ability to prove her case. And, again, I have the  
17 burden. And in order to show that proximate cause  
18 element I think I've got to show that connection of  
19 what happened between Point A and Point B, between  
20 4:00 and 4:17. I'm not going to drag this thing  
21 out and have these 12 people sit here for a month  
22 because I want to just drag this thing out. I'm  
23 going to be as efficient as with the witnesses that  
24 need to come in here and explain that causal  
25 connection.



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1           And so I would respectfully request that this  
2           Court deny this motion and allow this case to  
3           proceed like the vast majority of trials in this  
4           state to where liability and damages, with the  
5           exception of potentially punitive damages, are  
6           considered in one setting. Thank you, Your Honor.

7           THE COURT: All right. Okay. What's the  
8           other motion?

9           MR. MACKELCAN: The other motion is -- Your  
10          Honor, it was filed as a motion in limine. It  
11          really requests two things. It's part a motion in  
12          limine and part really is requesting a  
13          determination from you as to what the law of the  
14          state is. It deals with the wrongful death  
15          statute.

16          This is a case where the decedent died  
17          intestate. His mother filed to become personal  
18          representative. Sometime later Mr. Miller's  
19          brother filed a petition in the probate court to  
20          have his mother removed as the personal  
21          representative and to have -- to have a -- I guess  
22          it's a reduction, or limit her share of the estate  
23          as a result of failing to provide for Justin in his  
24          minority.

25          That -- the outcome of that was, essentially,

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1 a settlement that resulted in a division of the  
2 estate, 34 percent, to Christopher Miller who lives  
3 here in Beaufort, one brother, the other half  
4 brother who lives with Mrs. Delaney in West  
5 Virginia, 34 percent and Ms. Delaney at 32 percent  
6 and she remained the personal representative. It's  
7 a consent order in the probate court, public  
8 record, is what it says.

9 Plaintiff has taken the position that that  
10 enables Plaintiff to recover damages under the  
11 wrongful death statute for the two brothers. We  
12 believe that that is not the appropriate reading of  
13 the wrongful death statute. That the wrongful  
14 death statute identifies who the heir is, it goes  
15 face down intestacy, that's Mrs. Delaney. She  
16 testified to that in her deposition, she is the  
17 only heir.

18 We don't take issue with how they want to  
19 divide the estate. But for the purpose of a  
20 wrongful death case, any recovery goes directly to  
21 the beneficiaries. It doesn't go into the estate,  
22 it goes directly to the beneficiary. In this case  
23 the beneficiary is Mrs. Delaney.

24 So that's essentially it. We're asking for an  
25 order from the Court identifying her as the sole

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1 statutory beneficiary for the purposes of awarding  
2 damages in this case.

3 THE COURT: Okay.

4 MR. HOYLE: Your Honor, good afternoon again.  
5 Just a little bit of housekeeping for the record.  
6 This motion was originally filed by Mr. MacKelcan,  
7 I think, back in May or June and it was asked to be  
8 heard. Judge Mullen actually entered a Form 4  
9 order denying that motion without prejudice saying  
10 it was proper for the trial court judge to hear it.  
11 I'm not going to be hyper-technical about it, but I  
12 do want to note for the record that I do not  
13 believe this motion has since been refiled.

14 Nevertheless, we're at, essentially, a  
15 pretrial hearing at the moment, and so I think it's  
16 appropriate to address these issues. And so I've  
17 handed up a response in opposition that's several  
18 pages long. Mr. MacKelcan is correct that there is  
19 an order filed in the Beaufort County Probate  
20 Court. It was filed on July 2th, 2013.

21 And, certainly, I don't want to read to Your  
22 Honor from our papers, but the short version of  
23 that is that back in the mid 1990s when there was a  
24 big discussion about these so-called deadbeat dads  
25 and the Congressman Gingrich was the speaker and

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1       there was legislation going on in Washington  
2       dealing with so-called welfare reform and David  
3       Beasley was our Governor, our general assembly  
4       amended both the wrongful death act and intestacy  
5       code, the intestacy provisions of the probate code,  
6       to provide that an interested person could file a  
7       verified petition in the probate court -- that's  
8       the only court that could decide it -- to determine  
9       whether or not a parent should take under either,  
10      one, the wrongful death act or, two, the intestacy  
11      statute if that parent, quote, failed to provide  
12      for the decedent in his minority.

13             I'll be honest with you, Judge, there's not a  
14      lot of case law interpreting either of those  
15      statutes. And I will note just for the record, and  
16      so everybody's clear, there may be a reporter back  
17      there in the probate court when this verified  
18      petition was filed, counsel for Ms. Delaney  
19      vigorously contested that. There was a three-day  
20      hearing downstairs with Judge Fulp as the presiding  
21      Probate Judge, and there were witnesses from West  
22      Virginia that were here. It was quite a scene in  
23      this courthouse, and I'll just leave it at that.

24             But nevertheless, Judge Fulp in his wisdom had  
25      a judicially mandated and judicially supervised

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1 settlement conference. And he practically locked  
2 the lawyers for Christopher Miller and the lawyers  
3 for Ms. Delaney in a room, and we agreed to  
4 something that makes a lot of sense. And that was  
5 the distribution that Mr. MacKelcan requested.  
6 That was actually what is -- I'm not a probate  
7 lawyer, so I apologize, it's actually something  
8 known as a 62-3-912 agreement among successors. I  
9 imagine, you've been a circuit judge long enough,  
10 you've probably dealt with that back in the day  
11 when probate appeals went to the circuit court.

12 And in that agreement among successors, it was  
13 done pursuant to a statute that allows, quote,  
14 competent successors to, again, quote, agree among  
15 themselves to alter the interest, shares or amounts  
16 under the laws of intestacy in a written contract  
17 executed by all who are affected by its provisions.

18 Well, because Justin Miller died without issue  
19 and he died unmarried, Mr. MacKelcan's correct that  
20 at law the sole heir was Rebecca Delaney. And if  
21 Rebecca Delaney had been completely disallowed by a  
22 finding of probate court or if somehow she had --  
23 did not survive her son, it would go to the next  
24 parentela, which is -- would be the two brothers.  
25 And we cite in our papers long case law in this

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1 state that says that's what happens in that kind of  
2 a scenario.

3 We would submit that under South Carolina law  
4 the probate court is given significant discretion  
5 in the ruling on the 62-3-912 agreements. And, in  
6 fact, the probate court has exclusive jurisdiction  
7 to determine heirs. So under a case from, gosh,  
8 1904, the Kitchen v. Southern Railroad case which  
9 we cite in our papers, it's found at 68 S.C. 554,  
10 the word heir and the word distributee means the  
11 same thing unless there is something to change the  
12 ordinary meaning of heir. That case goes on to  
13 cite -- to say in order to understand who is the  
14 heir it is necessary only to inquire to whom by the  
15 law of the land would the estate pass in the case  
16 of intestacy.

17 So it's our position, which we set forth in  
18 our papers, that as a result of these probate  
19 proceedings the heirs for those who benefit under  
20 the wrongful death act are now Rebecca, Christopher  
21 and Donovan. And we believe that to suggest  
22 otherwise would lead to an illogical result and run  
23 contrary to the intent of the general assembly in  
24 passing that legislation back in 1996. And as Your  
25 Honor is aware courts are required in construing a

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1 statute to reject an interpretation when such an  
2 interpretation leads to an absurd result.

3 The Defendant's argument basically is that  
4 even if the probate court had said, we find by  
5 preponderance of the evidence Parent A did not  
6 provide for the decedent in his minority and we're  
7 going to consider her to have predeceased her son,  
8 that the circuit court still has to come in and  
9 say, oh, no, no, Person A who's been completely  
10 disallowed is the sole heir at law for the wrongful  
11 death.

12 And that really doesn't make sense, because  
13 the purpose of this legislation was to deal with  
14 both the wrongful death statute and the intestacy  
15 statute. And I would note, our statute is very  
16 curious, there's like 18 or 19 states around the  
17 country that have similar statutes. Ours is the  
18 only state that lets a probate judge, in addition  
19 to completely disallowing something, to limit. The  
20 probate judge can essentially say, I'm going to  
21 limit that person's share 5 percent, 95 percent or  
22 somewhere in between.

23 And so we really believe that the codes can't  
24 be read in the isolation that they are suggested,  
25 and instead that this court should look at the -- I

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1 hate to use the term so-called, deadbeat dad  
2 statute, but that's what I'm going to call it --  
3 and the wrongful death act as a whole to produce a  
4 harmonious result. Because the purpose of the  
5 legislation was to amend this wrongful death act as  
6 well as the laws of intestacy.

7 In other words, you know, I think what the  
8 Defendant is trying to do is to, essentially,  
9 rewrite that 1996 legislation and lead us to  
10 something that just doesn't make good sense. I'll  
11 submit there is no case on this, no reported case  
12 on this. I'm not even aware of any trial court  
13 orders on this. We do have a very well -- I think  
14 reasonably well written eight-page response which  
15 we've handed to Your Honor. If you would like any  
16 of the cases that we cite in there, we're happy to  
17 provide those to Your Honor. And I'm happy to  
18 answer any questions that you may have or to hear  
19 from Mr. MacKelcan.

20 THE COURT: Okay. Yes, sir?

21 MR. MACKELCAN: Your Honor, I just got their  
22 memo in opposition when I started this motion, so I  
23 can't speak to that. But I think that sort of  
24 what's been unspoken is what they're trying to do  
25 is add beneficiaries to increase the value of the



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1 case. I mean the brother who lived here with the  
2 decedent, they have an expert witness who has  
3 provided us a loss of, you know, his economic  
4 losses for him. There's no economic losses for  
5 Mrs. Delaney.

6 It's clear that the Plaintiff sees value in  
7 extra beneficiaries. And to say that that's the  
8 intent of the statute, I mean, the deadbeat dad  
9 statute, what it says is -- and, again, it doesn't  
10 say change who the beneficiaries are, it says  
11 change how you divvy it up. So there's an award.  
12 And if you look at the 15-51-40 it's very different  
13 from 15-51-20. 15-51-20 says who the beneficiaries  
14 are. 15-51-40 talks about the damages. And what  
15 that says is there's this award, and one of the  
16 parents can go to the probate court and say, hey,  
17 this was a deadbeat dad, we shouldn't split this  
18 50/50. That's not fair. I should get more.  
19 That's not what we have here. That's not what we  
20 had in the probate court.

21 Mr. Hoyle also said that the probate court has  
22 the authority to determine who to heir is. That  
23 didn't happen here. I think it's important to know  
24 what that order and recognize what that order is  
25 and what it's not. Probate court did not say who

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1 the heir was. Probate court simply stated, this is  
2 how to divide the estate. They didn't talk about  
3 the wrongful death case. They didn't talk about  
4 wrongful death beneficiaries. It was purely about  
5 the estate.

6 Now, there's a survival action in this case.  
7 Certainly how that is distributed, if there is a  
8 recovery, that would be relevant. But for the  
9 purposes of awarding damages under wrongful death,  
10 it's just a misreading of the statute. It's adding  
11 beneficiaries to drive up the value of the case and  
12 that's -- that's just not what the statute says nor  
13 what the legislature intended when they passed it.

14 So for that reason we believe that the -- that  
15 Rebecca Delaney is the appropriate sole statutory  
16 beneficiary for damages.

17 THE COURT: Okay.

18 MR. HOYLE: Just briefly, in response, Your  
19 Honor. Going back to it, and Mr. MacKelcan  
20 actually came and watched the spectacle downstairs.  
21 This was not something that I engineered to, quote,  
22 unquote, achieve value in extra beneficiaries.  
23 Ms. Castleberry and I, actually, vigorously  
24 contested this in a three-day proceeding.

25 But, nevertheless, Mr. MacKelcan has raised

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1       the fact that I have hired an economist. That's  
2       true. Because Justin and one of his brothers lived  
3       together here in Beaufort. They had an apartment  
4       together, they shared certain household chores.  
5       The economic loss from an economist for those kind  
6       of things isn't very much, but I thought given the  
7       procedural posture of the case that made sense to  
8       do so.

9               But what's also important to note is that  
10       Christopher Miller, the oldest brother of these  
11       three brothers, tried to become the personal  
12       representative of this estate, because he wanted  
13       his damages considered. These two young men,  
14       Christopher and Justin, both were diagnosed with  
15       what we now know as autism spectrum disorders. And  
16       together -- as I mentioned, they were able to live  
17       independently.

18              Since this tragedy, and it is a tragedy, I  
19       agree with that, Christopher has not been able to  
20       live independently. He's no longer able to live  
21       with his best friend, the person that he could do  
22       his activities with. And while there's testimony  
23       in this case that he has a limited IQ and he has  
24       overwhelming cognitive deficits that may render  
25       him, perhaps, less than high functioning, I

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1       should -- to the extent that's even a good thing to  
2       talk about, he wanted to make sure that he had a  
3       voice in these proceedings. And so that's --  
4       that's certainly my effort with respect to the  
5       economist. It's not because I'm trying to gin up  
6       damages here.

7               The point -- reality is, though, if you were  
8       to go downstairs and ask Connie Simmons, she's the  
9       clerk of the probate court down there, to pull the  
10      jacket for this case -- for the probate estate of  
11      Justin Miller dying intestate and without heirs --  
12      excuse me, intestate without issue, a guy with a  
13      net worth of about \$1,600 in personal property,  
14      and, yet, downstairs at this probate proceeding  
15      there were three lawyers from my firm,  
16      Ms. Castleberry. There were lawyers from Peters  
17      Murdaugh firm in Hampton. Sammy Svalina a member  
18      of the Beaufort County bar.

19             I don't think they can -- realistically --  
20      I'll say because I was there with their air  
21      conditioning realistically accommodate that many  
22      people in the probate courtroom. People weren't  
23      there fighting about \$1,700. The most valuable  
24      asset of this estate, quite frankly, and I hate my  
25      client has to hear me say this, but the most

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1       economically valuable thing to this estate was the  
2       wrongful death and survival claim.

3             And, again, going back to the intent here. It  
4       really is an absurd result to say that a probate  
5       court could go through such a proceeding, totally  
6       zero somebody out, and according to Mr. MacKelcan,  
7       well, that's the only person whose damages would  
8       get considered.

9             I think it is unique, because I'm not aware of  
10      any other statutory quirk or mechanism that would  
11      have you, quote, unquote, adding beneficiaries.  
12      But if you're altering -- going back to that  
13      compromised language -- if you're altering the  
14      intestate interest, if you're altering who the  
15      heirs are, which would be the same thing as if the  
16      probate judge had actually issued a ruling saying,  
17      oh, I'm going to limit Ms. Delaney to 5 percent,  
18      10 percent or what have you, and give the  
19      remaining -- give that money to the next parentela,  
20      it would be the same result, that's what happened  
21      by this judicially supervised settlement agreement  
22      which was reduced to writing into a consent order.

23             And as Your Honor well knows, it's the public  
24      policy of this state to encourage the resolution of  
25      disputes. That's why we spent two days in

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1 mediation back in January and, yet, nine months  
2 later here we are. But, nevertheless, I'm happy to  
3 hand up the order from the probate court if that's  
4 something that's needed. I think our papers speak  
5 for themselves.

6 THE COURT: I need -- I definitely need the  
7 statutory language, I need the cases that you've  
8 talked about. So I definitely need those.

9 MR. HOYLE: We'll hand those up momentarily,  
10 Your Honor, or, perhaps, email them to your law  
11 clerk if we don't have them handy. I honestly  
12 don't know.

13 THE COURT: Yeah.

14 MR. HOYLE: Thank you, Your Honor.

15 THE COURT: Yes, absolutely.

16 Now, those are the two and then we're back to  
17 the Plaintiff? Yes?

18 MR. MACKELCAN: Your Honor, just briefly, and  
19 I haven't spoken about the case that we cited yet,  
20 but it's a case -- it's an older case, but it is a  
21 case that dealt with a man who was seeking to be a  
22 beneficiary in a wrongful death case. He was never  
23 adopted but raised from age nine months as the  
24 child of this -- the decedent in this particular  
25 case. And he petitioned to be the beneficiary and

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1 the court denied it. And so -- because he wasn't  
2 officially an heir. He'd never been formally  
3 adopted.

4 So, although there is a shortage of case law  
5 on this issue, I think that just goes to show that  
6 it's a strict reading of the statute. And the  
7 statute says what it says. And it's -- in this  
8 case it does not add beneficiaries.

9 The other thing I think is important.  
10 Mr. Hoyle said that Mr. Chris Miller's damages were  
11 not that much. Well, no, Chris Miller, based on  
12 Perry Woodside's expert, you know, damages --

13 THE COURT: The economist.

14 MR. MACKELCAN: -- he said not that much.  
15 Well, it's \$350,000. I mean, I tell you, that's a  
16 lot to my client. That's a lot to me. And, you  
17 know, we're -- that's not going to be the end of  
18 it. So it is a very significant issue in this  
19 case.

20 And the second part of the motion was the  
21 motion in limine, which -- requesting that the  
22 court not allow testimony regarding those damages  
23 to the extent -- so that they wouldn't confuse the  
24 jury as to who the beneficiary is and how they are  
25 supposed to award damages in the case.

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1           THE COURT: Let me ask you this question.  
2           What about the survival action? Because that --  
3           that clearly with regards to the estate, probate  
4           judge it's -- the law of this case, is it not, that  
5           at least with regards to the survival action that  
6           the beneficiaries are designated now by that order  
7           in the probate court, right?

8           MR. MACKELCAN: Yes.

9           THE COURT: Okay.

10          MR. MACKELCAN: Yeah, there's no disagreement  
11          with that. I think that the survival action  
12          proceeds goes to the estate. Yes, they can divide  
13          the estate how they want. It's how you value the  
14          wrongful death case or the cause of action for  
15          wrongful death.

16          THE COURT: Okay.

17          MR. MACKELCAN: Yeah, there's no disagreement  
18          with that.

19          THE COURT: Okay. All right. Got it. Now,  
20          you wanted to pass up that case that you have? All  
21          right.

22          Now, at this point I'm going to -- what are we  
23          going to do, going to shift to the Plaintiff?

24          MR. HOYLE: Yes, Your Honor.

25          THE COURT: All right.



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1           MR. HOYLE: One moment, Your Honor. Beg the  
2 Court's indulgence.

3           THE COURT: Okay.

4           MR. HOYLE: These are the Plaintiffs' motions,  
5 Your Honor --

6           THE COURT: All right.

7           MR. HOYLE: -- that were filed last Wednesday  
8 with the court clerk.

9           THE COURT: Okay.

10          MR. HOYLE: Your Honor, I apologize in  
11 advance, but I believe that there are 17 separate  
12 pretrial motions that have been filed and are  
13 consolidated motions in limine.

14          THE COURT: Okay.

15          MR. HOYLE: I'll just start with No. 1. That  
16 seems like the logical thing to do.

17          THE COURT: Yes.

18          MR. HOYLE: Your Honor, No. 1 is prescribing  
19 fault to a nonparty, and we've already seen that a  
20 little bit with respect to the short claim  
21 statements of nonargumentative facts that  
22 Defendant, CasePro, is going to seek to impute  
23 fault to others, potentially, the United States  
24 Department of the Navy, Calvin -- excuse me, Office  
25 of Veterans Affairs, Edward Ray and, perhaps,

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1 others.

2 As Your Honor knows, there's not much case law  
3 in this state since 2005 on our Uniform  
4 Contribution Among Tortfeasors Act Reform, but  
5 there is the Fagnant case that Judge Harwell in our  
6 federal courts issued back on the last day of 2013  
7 that says that the plain text 2005 statute simply  
8 codified a defendant's retention of a right to  
9 assert an empty chair defense at trial and receive  
10 a setoff for any settlement obtained from a joint  
11 and severable tortfeasor.

12 I'll represent to Your Honor that we've not  
13 received any other monetary recoveries in this case  
14 from any other source, so there's not going to be a  
15 setoff here. But what we would simply ask this  
16 Court to do is since these nonparties are not going  
17 to be on the verdict form and particularly the  
18 United States Department of Navy under Sovereign  
19 Immunity and Principles of Federalism could not be  
20 on a verdict form in the Court of Common Pleas,  
21 that this Court prohibit the Defendant, their  
22 witnesses and their counsel from ascribing any  
23 fault or liability to any nonparty.

24 The sole parties in this case are Rebecca  
25 Delaney as the personal representative of the

## PRE-TRIAL MOTIONS

1 estate and the Defendant, CasePro, Incorporation  
2 from Texas. And we would respectfully ask that the  
3 decision for this jury to consider as to relative  
4 degrees of fault would be the parties that are in  
5 the courtroom and not extraneous third parties.  
6 Thank you, Your Honor.

7 THE COURT: Okay. Yeah.

8 MR. MACKELCAN: Your Honor, I think that it's  
9 important to read the language that says, likewise,  
10 the Fagnant court found that the plain language of  
11 the 2005 Tort Reform Act codified a Defendant's  
12 retention of the right to assert an empty chair  
13 defense at trial and received a setoff for any  
14 settlement obtained from a joint and severable  
15 tortfeasor. Those are two different things. Empty  
16 chair defense, receiving setoff from a joint and  
17 severable tortfeasor.

18 You've already heard us talk about proximate  
19 cause. It's impossible to discuss this case  
20 without discussing the actions of other parties.  
21 First -- I mean, Plaintiff's own expert witness  
22 produced a report at his deposition that ascribes  
23 fault to Edward Ray's employer. They start with  
24 that. That's the first person that Calvin Hunt met  
25 with. You've got Calvin Hunt. You've got federal

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1 employees. That's independent of our arguments  
2 related to the contract and the vicarious liability  
3 aspect.

4 But, I mean, Calvin Hunt got into an  
5 unoccupied running fire truck. And so these are  
6 central to proximate cause. And I think it's the  
7 law of the state that you can make an empty chair  
8 defense at trial. I believe that, certainly, to  
9 not allow us to do that would be completely tying  
10 our hands behind our back in this case.

11 MR. HOYLE: Your Honor, just briefly on some  
12 of those.

13 THE COURT: All right.

14 MR. HOYLE: Mr. MacKelcan ended by talking  
15 about the fire truck. I don't know the subsection  
16 off of the top of my head, but there is a  
17 subsection of the South Carolina Tort Claims Act  
18 that grants absolute immunity to any governmental  
19 agency that is involved in the provision of fire,  
20 police or emergency medical services at the time a  
21 claim accrues or arises. So I think as a matter of  
22 law that there is no liability to the fire  
23 department.

24 More troubling is the discussion about Edward  
25 Ray. And I'll admit an expert that we can talk

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1       about later had some thoughts about Mr. Ray, but  
2       we're not going to elicit that testimony from this  
3       witness stand. And in point of fact, I originally  
4       did name the employer of Edward Ray, and Mr. Ray  
5       passed away before his deposition could be taken  
6       and we could obtain what information he had. Quite  
7       frankly, I think any information about what Mr. Ray  
8       did or didn't do that day or what he did or didn't  
9       know died with him.

10             And after Judge Jeff Young granted summary  
11       judgment to the state office of Veterans Affairs in  
12       this very courtroom Mr. MacKelcan and his  
13       colleagues removed me to Federal Court and alleged  
14       that I had fraudulently joined the state office of  
15       Veterans Affairs. And said that because we  
16       couldn't meet -- provide at least a scintilla of  
17       evidence, that it was clear that we had solely  
18       named the state office of Veterans Affairs for  
19       nefarious purposes, to home cook them here in  
20       Beaufort County.

21             And Judge Norton didn't even hold a hearing on  
22       that. He said that they'd not come forward with  
23       any evidence that Plaintiffs' counsel had acted in  
24       bad faith. He wasn't going to presume that we had  
25       done that, and he sent the case for the second time

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1 back here to Beaufort County.

2 So I respectfully think it's a little  
3 disingenuous now to hear statements from opposing  
4 counsel that Edward Ray somehow has all this great  
5 culpability when in pleading the federal court they  
6 made a big ballyhoo about the fact the summary  
7 judgment had been granted.

8 Moreover, I think the fact the summary  
9 judgment was granted is the law of the case at this  
10 case as far as we're concerned. And if the state  
11 office of Veterans Affairs -- if I can't -- this is  
12 going to sound horrible -- but if I can't obtain a  
13 judgment against them and collect money from  
14 them -- for my client from them, I really don't  
15 know that it's appropriate for Mr. MacKelcan to  
16 point the finger at them.

17 Similarly, going back to the US Navy or other  
18 federal folks, you know, federal government's not a  
19 party here. They're not going to have a lawyer  
20 here. They would need to consent to be tried here.  
21 That would all have to be handled somewhere else.  
22 And I will note that this case has been removed  
23 twice to federal court and sent back here. And so,  
24 you know, I really don't know that any of those are  
25 appropriate arguments for those reasons.

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1           But as a threshold matter I think the  
2           Defendant could probably in closing argument argue  
3           an empty chair in certain circumstances. But I  
4           think there's a difference between eliciting  
5           testimony from live witnesses or from witnesses  
6           that we're going to have to, unfortunately, play  
7           for several hours on videotape that tends to show  
8           that nonparties bear some liability or  
9           responsibility for this incident.

10           And so with that, I would respectfully rely on  
11           our papers and ask that the court prohibit the  
12           Defendant from eliciting evidence asserting fault  
13           or blame against a nonparty.

14           THE COURT: Okay.

15           MR. MACKELCAN: Your Honor, briefly, I think  
16           it's important with the summary judgment as to the  
17           South Carolina Department of Veterans Affairs, my  
18           understanding was that that was granted because  
19           there was a -- Mr. Hunt was not a veteran, and so  
20           as a result Mr. Ray was not acting in his official  
21           capacity. So as a result South Carolina Department  
22           of Veterans Affairs could not be held liable for  
23           the negligence, if any, of Mr. Ray. So Mr. Ray  
24           himself could have been a defendant, personally.

25           But this all goes to the intervening and

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1       superseding proximate cause, you know. There's a  
2       lot going on in this case and for us to not be able  
3       to argue that these other events and actions of  
4       other parties impacted the foreseeability here, I  
5       mean, you're going to hear that word more than  
6       you've probably heard in a while.

7               But this is -- it's an unforeseeable case, and  
8       in order to establish unforeseeability we've got to  
9       be able to say why all of the different steps that  
10      happened they are just unbelievable, you know. And  
11      I think that that's really the key here, is that  
12      what the Plaintiff is attempting to do is to take a  
13      small part of the story, ignore the rest of the  
14      story except the end and hold CasePro liable for  
15      that. And I think we're entitled to be able to  
16      argue those intervening superseding proximate  
17      causes.

18             THE COURT: Okay. We're really getting to the  
19      end of our day. Let me ask this question. I have  
20      the Plaintiff's motions in limine. I know that we  
21      had some things that were e-mailed. Do you have  
22      them in paper form here?

23             MR. MACKELCAN: Yeah, we do.

24             THE COURT: All right. Great. Because I -- I  
25      think what probably makes more sense is for me to



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1 take these documents with me and for us to  
2 reconvene in the morning.

3 MR. HOYLE: And, Judge, I have written  
4 responses in opposition to their kitchen sink  
5 motions in limine, which I'll hand up via our fine  
6 clerk of court and provide copies to opposing  
7 counsel as well.

8 MR. LOVELL: Judge, can I ask you the easiest  
9 question you'll be asked today?

10 THE COURT: Yes.

11 MR. LOVELL: When the jury comes, do you want  
12 to us to stand up or stay in our seats? Every  
13 Court does it differently, and I get rebuked when I  
14 stand up and sometimes I get rebuked when I don't.

15 THE COURT: I will never rebuke you.

16 MR. LOVELL: Okay.

17 THE COURT: It will be your choice.

18 MR. LOVELL: I just want us to be on the same  
19 page. So we'll flip a coin, Judge.

20 MR. HOYLE: We stand up.

21 THE COURT: You guys need to -- I'll let you  
22 all hammer that out. What I never do is I never  
23 chastise lawyers for that, ever. It's your choice,  
24 it's just your choice.

25 (Discussion is held off the record.)

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1           THE COURT: All right. In the morning the  
2 jury is coming in at 9:30, and we need to be here  
3 at nine. We need to be here at nine. I hate to do  
4 it, have the court personnel come in early, but  
5 we'll be here at nine. See you all bright and  
6 early, 9:00. And it very well may be that on your  
7 papers I'll be able to make a determination without  
8 oral arguments and let you know, hopefully, call  
9 what we need to argue. All right. Thank you.

10          MR. HOYLE: Thank you, Your Honor.

11          THE COURT: Yes. Thank you.

12          (Trial adjourned for the day at 5:30 p.m. )  
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## PRE-TRIAL MOTIONS

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. WHIDDON, Court Reporter, certify that I  
7 was authorized to and did stenographically report the  
8 foregoing proceedings and that the transcript is a true  
and complete record of my stenographic notes.

8

DATED this 5th day of March, 2016.

9

10

11

12

/s/ Mona L. Manley  
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STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF COMMON PLEAS  
CASE NUMBER 2012-CP-07-03782

REBECCA DELANEY, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF JUSTIN NICHOLAS MILLER

PLAINTIFF

---

VOLUME ONE

---

ORIGINAL

VERSUS

CASEPRO, INCORPORATED

DEFENDANT

OCTOBER 7 THROUGH 16, 2015  
PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL  
BEAUFORT, SOUTH CAROLINA

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Wanda H. Rowe, CVR-M  
Official Court Reporter

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
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OCTOBER 7 THROUGH 16, 2015

PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

CASEPRO, INCORPORATED

DEFENDANT

---

B E F O R E:

HON. DIANE S. GOODSTEIN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

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Mr. Mike McCabe, Client Representative

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1 DAY TWO, WEDNESDAY, OCTOBER 7,  
2 2015, BEGINNING 9:52 A.M.

3 NOTE: DAY ONE, TUESDAY, OCTOBER  
4 6, 2015, WAS TAKEN BY COURT  
5 REPORTER MONA MANLEY.

6 PRETRIAL MOTIONS/RULINGS:

7 BAILIFF: All rise. This court is now in session.  
8 The Honorable Diane Goodstein presiding.

9 THE COURT: Thank you so much, and please be  
10 seated, and good morning, everyone. All right. I know  
11 we're getting started a little bit later than normal,  
12 but I've been going through some of the information  
13 again, and working a little bit with my clerk. But I do  
14 need to disclose, just so everyone is aware, I have gone  
15 online. You know, actually, I've asked Judge Mullen's  
16 law clerk, only because she has the ability to go online  
17 and pull documents that I don't, to keep me from having  
18 to bother the clerk's office; because I wanted to see  
19 the order of adjudication of Mr. Hunt, because as I was  
20 going through these documents, there was some issue in  
21 my mind whether or not I was dealing with a not guilty  
22 by reason of insanity or incompetency.

23 So, I just need to disclose for you all that I have  
24 accessed only that document, and I don't know if I

1 actually have it yet. I don't have it yet, but I'm  
2 looking for it, because I wanted to look at it, to be  
3 certain that it was, in fact, an NGRI, rather than a  
4 determination of incompetency. So, I mean, that's the  
5 extent of the disclosure. As you know, if I get  
6 information other than from you guys, I'm to let you  
7 know that, and that's the reason for the disclosure, to  
8 let you guys know that. I wanted to be certain that the  
9 disposition was an NGRI. Any concerns or comments about  
10 that from the Plaintiffs?

11 MR. HOYLE: None from the Plaintiff, your Honor.

12 THE COURT: From the Defendant?

13 MR. LOVELL: No, your Honor.

14 MR. MACKELCAN: No, your Honor.

15 THE COURT: Okay. Now, as so often happens with me  
16 and motions in limine, two things occur. Number one is,  
17 I am reluctant to rule in a vacuum, and I don't. And  
18 that happens with most motions in limine, but I'm always  
19 being grateful that Counsel presents them, just so I can  
20 be looking and listening. So, if I don't rule on your  
21 motion in limine and find it to be premature, please  
22 understand, it's not because I don't think that your  
23 time and your energy was not well spent, and that I'm  
24 not appreciative of it; it's just because I just got  
25 here, and I am reluctant, always, to rule in a vacuum.

1           Because the worst thing I feel like I can do to  
2 trial lawyers is rule one way before I get to hear a  
3 case, and then, lo and behold, I change on you in the  
4 middle of a trial. What a terrible thing to do to a  
5 trial lawyer. I'd rather keep you in the dark. And in  
6 my experience, I think that serves you better, because  
7 while trial lawyers can do anything, truly, and do, I  
8 think, if I can keep you from being in that position,  
9 that's better for you, and certainly better for me.  
10 Because it's a difficult thing to make a decision one  
11 way, and then, realize mid-stream, oh, my goodness,  
12 based upon what I'm hearing, I shouldn't have done that.  
13 It's not a happy place for a judge to be. So, please  
14 understand that, that's where I am on many, actually,  
15 many of these issues.

16           For example, I cannot rule on the 911 tape, if I  
17 hadn't heard it. I can't rule on a videotape if I  
18 hadn't seen it. It is impossible for me to do that. It  
19 is impossible for me to rule on whether or not the --  
20 what is the -- whether or not the standard of care has  
21 any relevance, when I haven't heard the first bit of  
22 testimony about that case. Can't do that, either.

23           So, bear with me as I try to go through and -- as I  
24 go through, and I'll tell you on the things I have made  
25 a determination and the ones I'm reserving.

1 All right, now, the first one is, not going to  
2 bifurcate the trial. I'm just simply not. I know it's  
3 of exercise of discretion. And based upon what I have  
4 heard to this point, I think that, to bifurcate  
5 liability and damages would be excruciatingly difficult,  
6 and I think that I would be -- end up in the trial  
7 regretting that, and trying to ascertain how do I get to  
8 proximate cause without also including information that  
9 could be considered by the jury with regards to damages.  
10 It would just be impossible. So, I'm not going to  
11 bifurcate the trial.

12 Having said that, that doesn't have anything to do  
13 with 403. 403 is still there, and there are still going  
14 to be determinations that have to be made. And so,  
15 while I'm not going to bifurcate the trial, that doesn't  
16 mean I'm not going to consider 403, either. So, that's  
17 the first thing.

18 The second thing is, is that the beneficiaries  
19 under 15-51-20, are the beneficiaries under 51-51-20. I  
20 am aware and have read 15-51-40. I have read the order  
21 from the probate court. The motion wasn't even brought  
22 under probate matter under 51-51-40. The order from the  
23 probate court only addresses the estate. And there is a  
24 difference between a wrongful death action and a  
25 survival action.

1           A survival action under South Carolina law is  
2 brought by the estate, on behalf of the estate.  
3 Wrongful death beneficiaries are statutory  
4 beneficiaries, and that's, simply, they're statutory  
5 beneficiaries. Whether or not there is a relationship  
6 to intestacy is, in my mind, coincidental, because they  
7 are the statutory beneficiaries. You could have a will  
8 and a wrongful death action, and the wrongful death  
9 statutory beneficiaries are the beneficiaries.

10           So, irrespective of what happens in this case with  
11 regards to the survival action, clearly, with regards to  
12 the survival action, those are matters brought by the  
13 estate, and that order controls, because it controls the  
14 estate.

15           But with regards to the wrongful death action, the  
16 wrongful death action, those statutory beneficiaries  
17 have not been altered. They haven't been altered by the  
18 probate court. They haven't been altered by motion,  
19 unless there is a motion that has been brought in the  
20 probate court, pursuant to 15-51-40 that I am aware of,  
21 and I am aware of not. So, that's that issue.

22           The next issue is -- all right. Let me see. Ah,  
23 the empty chair argument. The empty chair argument. At  
24 this point, I am going to reserve making a  
25 determination, because -- actually, let me withdraw

1 that.

2 There's been a lot of discussion about the *South*  
3 *Carolina Uniform Contribution Among Tortfeasors Act*.  
4 And the issues, as I understand the issues in this case,  
5 the sovereign immunity is involved in this case.

6 There were actions that were brought against  
7 different entities, for which summary judgment was  
8 granted. And a summary judgment, as I understand it,  
9 may have been brought pursuant to sovereign immunity.  
10 It may have been brought due to a lack of proof. So, at  
11 this point, I am reluctant to talk to the Defendants  
12 that they cannot introduce any evidence of  
13 responsibility of third parties. I think that would be  
14 error, and I'm not going to allow that. Now, if it  
15 isn't relevant for some reason, as we get into the  
16 trial, then, I have more information, you can raise it  
17 at that time.

18 Having said that, judicial estoppel may be an  
19 issue. I don't know that, but it may. But it is  
20 impossible for me to know that at this point. So, that  
21 would be my position on the ability of the Defendants to  
22 argue the empty chair, if you will, or to allege that  
23 fault lies with someone other than Defendant, so.

24 Now, next. Now, with regards to an in limine  
25 exclusion of mention of the *Federal Tort Claims Act*

1       against the United States government, it's got to have  
2       relevance. And I don't know why, as I sit here, I don't  
3       know what the relevance would be, and I don't want to  
4       make it up, and I don't want to hear about what it might  
5       be. Either it is relevant or it isn't relevant.

6       I would appreciate, during your opening statements,  
7       if you not state, you know, we've been to the federal  
8       court; we've done this; we've been to the state court,  
9       and this has happened. I would appreciate not doing  
10      that. If it becomes relevant, it's introduced in the  
11      trial, you can certainly argue it in your closing  
12      arguments. But I'm going to instruct you at this  
13      juncture, please do not talk about proceedings such as  
14      the *Federal Tort Claims Act*, and what may have happened  
15      in other courts at this point, because I don't know what  
16      the relevance would be, at this juncture.

17      Now, excluding statements? Yes, I can make  
18      evidentiary rulings as they happen in the case, and will  
19      be permitted to do that. With regards to -- I can, with  
20      regards to excluding at this juncture, testimony of  
21      witnesses, I'm not going to do that in a vacuum.  
22      Collateral payment, collateral benefit, collateral -- I  
23      gather, to make collateral source rule. In collateral  
24      source rule --

25      MR. HOYLE: Your Honor, we'll withdraw that,



1 because, as I stated yesterday, we've not received any  
2 payments from any source.

3 THE COURT: I understand. And you've got the  
4 unrelated claims. Not mentioning it again, it's  
5 impossible for me to rule in a vacuum, and I'll be  
6 prepared to rule if it appears at trial.

7 Now, it says, *criticism of Donovan Delaney's*  
8 *absence at trial.*

9 MR. MACKELCAN: Your Honor, we're not going to do  
10 that, so we've already discussed that, so.

11 THE COURT: Okay. Okay. Okay. Failure to call  
12 equally available witness. That's just -- that's how  
13 you try cases. I'm not going to tell you not to do  
14 that.

15 And again, statements, I'm not going to rule in a  
16 vacuum on statements. And there are lots, lots of those  
17 motions.

18 There's comparative fault. What about -- there's  
19 some concern about comparative fault in here. Again, I  
20 can't rule in a vacuum. If that's the issue that's been  
21 raised, that's more appropriate post-testimony, so. I  
22 will just refrain from ruling on that.

23 Now, that's the Plaintiff's motions in limine.

24 Now, the Defendant's motion in limine. Here we go.  
25 Again, regarding the professional standard of care, I

1 understand the concern, because it hadn't been brought  
2 as a malpractice case. I get that. I don't know. I  
3 don't know. I mean, it's, again, it's impossible for me  
4 to rule at this point, without hearing the case.

5 That is the money that you exchange pursuant to the  
6 personal services contract. Here's what my concern is  
7 about that. My concern about that is that, there must  
8 be some proof of the relationship between the Defendant,  
9 the treating entity, and the Defendant, and the doctors,  
10 and the nurses. And I don't know what that proof is at  
11 this point. Obviously, who pays. Who pays somebody's  
12 salary, who pays money, is a pretty good indicator of  
13 control. So, again, it's impossible for me to rule in a  
14 vacuum, and I will simply do that in the course of the  
15 trial.

16 And I gather, there's a request to exclude the  
17 video of Mr. Hunt. Again, I think it's impossible. If  
18 I hadn't seen it, how am I going to rule on it? So,  
19 just make the motion at the time, and I'll take a look  
20 at it. Again, photographs are the same. 911 calls are  
21 the same.

22 Now, the peer review of Dr. Jansen. Again, when we  
23 get to that point, here's what gets excluded. It has to  
24 be a peer review committee which has been established  
25 pursuant to our statute. The question is, is that what

1 we're dealing with, and are we dealing with the  
2 information pursuant to that, and is the information  
3 being used as a sword and a shield. And I'm not going  
4 to make that determination. Again, in a vacuum.

5 But, I will tell you that, for testimony and for  
6 testimony to be excluded based on the peer review  
7 statute, it has to be peer review committee, which has  
8 been organized pursuant to the statute. And then, the  
9 information has to be information that has been received  
10 in that context and kept within that context. So, if  
11 it's otherwise, then, I have to deal with it at that  
12 point.

13 And the reason is, is that, I do believe that peer  
14 review information can be used as a sword and a shield.  
15 And I don't think -- in other words, I don't think you  
16 can get something that's helpful, and then, run out and  
17 use it in litigation; and then, when an opposing party  
18 seeks to see if there's anything on the other side of  
19 that assertion that you can hide whatever is in the peer  
20 review committee. So, I have concerns about that.

21 So, but I don't know what we're dealing with. And  
22 again, I'm not going to rule on that. But I certainly  
23 would preview in that regard.

24 Having said that, I do want to also tell you that,  
25 if peer review information is available outside of peer

1 review as easily as it is within peer review, then, that  
2 doesn't make it discoverable within the context of a  
3 peer review committee, because we are to protect those  
4 peer review committees as much as we possibly can.

5 Okay. As long as it hasn't been used as a sword and a  
6 shield.

7 Prior medical and psychological records. Don't you  
8 just love that? It's like that law school, that book  
9 they tell students to read before they begin law school,  
10 *Getting to Maybe*. I feel like I'm getting to maybe.

11 The criminal responsibility and capacity to conform  
12 the -- the capacity to perform an evaluation. Don't  
13 know. Depends. Depends on if it's relevant. Depends  
14 on how it's offered, as well as the outcome of the  
15 criminal proceedings and the military criminal records  
16 and the documents from the Solicitor's Office.

17 And Number 12 is, *all evidence, testimony, and*  
18 *questioning regarding the Hampton County lawsuit*. It  
19 depends.

20 And 13 is the same. It depends.

21 Okay. So, I'm a little bit concerned. I mean, I  
22 really would like to hear just a little bit of  
23 discussion about -- and from both sides, and this is the  
24 Defendant's motion. I think I'll start with Defendant.  
25 Well, actually, let me start with the Plaintiff. I know

1 that's a little bit backwards, because, when I was going  
2 through the testimony about standard of care, that this  
3 wasn't brought as a malpractice action. Talk to me a  
4 little bit about that. Why isn't this a malpractice  
5 case?

6 MR. HOYLE: Well, I think -- good morning, your  
7 Honor.

8 THE COURT: Good morning.

9 MR. HOYLE: Under our case law, a malpractice  
10 action can only be brought by the patient. Our Supreme  
11 Court said that in the *Bishop* case. There's tons of  
12 cases in our case that say that. Justin Miller was not  
13 a patient of the hospital. He wasn't a patient of Dr.  
14 Jansen. He wasn't a patient of these nurses. He was a  
15 foreseeable third party.

16 And if you look at the *Hardee* case, the *Hardee* case  
17 is what talks about the duty owed to a foreseeable third  
18 party. And in this particular litigation, Judge Mullen  
19 sat where you are sitting today, and struggled with the  
20 thin line, perhaps, that we straddling or getting close  
21 to, because our case law says that the duty owed to a  
22 foreseeable third party has to be identical to the duty  
23 owed to the patient. Otherwise, you're infringing on  
24 the doctor/patient relationship.

25 But there's nothing in *Hardee* that says that there

1 has to be standard of care testimony. And in fact, the  
2 law of this case from day one has been that's it's been  
3 an ordinary negligence case. I know you don't want to  
4 -- we won't tell the jury about all our trips to the  
5 federal courthouse in Charleston, but at the very first  
6 hearing in front of Judge David Norton, Mr. Mackelcan  
7 agreed on the record with Judge Norton, and that  
8 transcript's been filed and a part of this record here,  
9 that this was an ordinary negligence case, garden-  
10 variety negligence case.

11 We came back here to this courthouse after the  
12 first remand, and Judge Murphy, your colleague from  
13 Dorchester County, heard a motion to dismiss. And that  
14 the motion to dismiss was based on several issues in the  
15 papers, one of which was the failure to comply with the  
16 notice of intent statute. That portion of Mr.  
17 Mackelcan's motion was withdrawn. He said, well, Judge,  
18 they haven't pled it as a med/mal case; so, it's a  
19 garden-variety negligence case; I'll let that one fly.  
20 And she denied that motion on other bases.

21 So, from Plaintiff's perspective, we know that the  
22 case law in this state says, not every lawsuit against a  
23 medical provider is a professional liability case. It  
24 can be a garden-variety negligence case. It can be, you  
25 know, the cases that are out there involve everything

1 from a patient who wasn't properly watched, slipping and  
2 falling on her way to the bathroom. And you know, in  
3 all honesty, there's some analogy here. Calvin Hunt  
4 wasn't watched, and he left.

5 And so, from Plaintiff's standpoint, this is not a  
6 professional negligence case. The issues are confusing,  
7 and they are close to, perhaps, what a professional  
8 negligence case may be, but it's not pled that way, and  
9 I know that there's going to be a lot of discussion the  
10 second Mr. Lovell or Mr. Mackelcan stands up about  
11 experts in this case.

12 The Defendants -- or excuse me -- the Defendant  
13 disclosed an expert.

14 THE COURT: Let me stop you now, and let me ask you  
15 this question.

16 MR. HOYLE: Yes.

17 THE COURT: What does the -- what does the  
18 Plaintiff allege that the Defendant did that was  
19 negligent, careless?

20 MR. HOYLE: That's separate and apart from our  
21 negligent hiring, supervision, and retention. The  
22 actual negligence of the employees within the four walls  
23 of the emergency room that day --

24 THE COURT: Yes.

25 MR. HOYLE: -- were failing to keep Calvin Hunt

1 under close watch, and failing to keep him under their  
2 line of sight, and giving him permission to leave.

3 THE COURT: And what do you use as the duty, the  
4 alleged duty, for the jury to ascertain whether or not  
5 there was then a violation of that duty? How does that  
6 work?

7 I'm with you with the negligent hiring and  
8 supervision. I got that. With regards to keeping the  
9 watchful eye, keeping the constant, watchful eye, tell  
10 me, what do you use as a duty?

11 MR. HOYLE: Well, I'll go back to where we were at  
12 our summary judgment proceedings, your Honor.

13 THE COURT: Okay.

14 MR. HOYLE: And there was testimony from Dr.  
15 Hendelman. Dr. Hendelman's a U.S. General Services  
16 civilian employee that doesn't work for CasePro. And  
17 she's the person that Dr. Jansen, the CasePro employee,  
18 called on the telephone that day. And Dr. Jansen wrote  
19 down that, based on this conversation, Dr. Hendelman  
20 told us then that it was obvious this patient needed to  
21 be admitted.

22 When we deposed Dr. Hendelman, Dr. Hendelman never  
23 used the word *standard of care*. She didn't use those  
24 words. She talked about the way we practice. And I'll  
25 just read -- if you have the patience, I'll read this



1 exchange from the deposition.

2 Question:

3 THE COURT: And let me tell you, here's what --  
4 before you -- I'm going to tell all of you guys, and  
5 I'll remind you of it. Lawyers are brilliant. And  
6 because you're brilliant, when you read, you read very  
7 fast, and you can't help it, because you're brilliant.

8 And so, if I don't have a happy court reporter at  
9 the end of the day, I get a new court reporter. If you  
10 will notice, my court reporter ended up, yesterday,  
11 obviously was not happy. This particular court reporter  
12 loves me, so I want her to continue to love me. So, I'm  
13 going to ask you guys to remember that. Because you are  
14 brilliant, you will read very fast, which is going to  
15 stress my court reporter. So, remember that, and read  
16 slowly for me. After my reminding you that you're  
17 brilliant, you'll do it.

18 MR. HOYLE: Your Honor, I'm glad my wife's not  
19 here, because she would stand up and argue with you such  
20 that she'd probably be found in contempt.

21 THE COURT: Well, I'll give you an affidavit at the  
22 end of the trial that you're all brilliant, and you all  
23 can take them with you.

24 MR. HOYLE: We'll take judicial notice of that.  
25 Thank you, your Honor.

1 THE COURT: Yes.

2 MR. HOYLE: But going back to Dr. Hendelman. Dr.  
3 Hendelman -- let me back up a step. Dr. Hendelman  
4 testified:

5 *Question: Would you agree with me that,*  
6 *if someone comes in with thoughts of harming*  
7 *others, and they articulate that, it is*  
8 *foreseeable that they may actually harm*  
9 *others, if they are not kept under close*  
10 *supervision?*

11 *Answer: Yes. Definitely.*

12 You'll recall, yesterday, I also mentioned to your  
13 Honor that Dr. Jansen, in his deposition, the CasePro  
14 employee doctor, told me in his deposition that thoughts  
15 of harming others was self-explanatory; said it was  
16 common sense; don't need to go to medical school to know  
17 what that means.

18 So, these line of questions were asked of Dr.  
19 Hendelman as a followup to what I just read into the  
20 record.

21 *Question: If someone comes into the*  
22 *E.R. with suicidal ideations, a history of*  
23 *depression, and PTSD, and says that he has*  
24 *thoughts of hurting others, is it obvious*  
25 *to you that, that person needs to be admitted?*

1           Answer: Okay. By definition, a person  
2           who is a danger to self, danger to others,  
3           has to be committed -- has to be admitted  
4           to the hospital. Not committed, but admitted.

5           Question: Has to be?

6           Answer: That's part of our -- the way  
7           we practice, yes.

8           Question: So, if someone comes in the  
9           E.R. and says they are thinking about harming  
10          others, is that person required to be  
11          admitted?

12          Answer: That would be a requirement  
13          of admission, yes, based on the rule of  
14          danger to self, danger to others, or greatly  
15          disabled.

16          Question: But again, this document, --  
17          referring to a medical record --  
18          -- this document, which was filled out,  
19          looks like, on February 24, 2012, states  
20          that Calvin Hunt had thoughts of hurting  
21          others, correct?

22          Answer: Yes.

23          Question: Based on this document  
24          alone, is it your testimony that it was a  
25          requirement that Calvin Hunt be admitted?

1           Answer: Yes. It was based on the fact  
2           that he was a danger to self and a danger to  
3           others. He needed to be admitted, yes.

4           Question: Why?

5           Answer: Because he is a danger to self  
6           and a danger to others, by his own admission.

7           Question: And that's pretty obvious,  
8           correct? Because it is by his own admission?

9           Answer: That makes him in need of  
10          hospitalization.

11          Question: And then, add to that, if that  
12          person also comes to a medical facility and  
13          says he has thoughts of hurting others, is  
14          that pretty concerning?

15          Answer: Then, he needs to be hospitalized.

16          Question: And kept under close supervision  
17          until he can be hospitalized, correct?

18          Answer: If he came to my office, I would  
19          want to supervise him.

20          Question: So that he doesn't hurt others,  
21          correct?

22          Answer: So, that, yes, to keep him safe  
23          and keep others safe, yes.

24          Question: If someone comes into your  
25          office and says that they have thoughts of

1           hurting others, and they have a history of  
2           depression, history of violence, been in  
3           the psyche ward before, prior occasions of  
4           striking individuals, would you let that  
5           person walk right out of your office and go  
6           into the public?

7           Answer: No.

8           Question: Because that would be needlessly  
9           endangering the public; wouldn't it?

10          Answer: Yes. And the person themselves.

11          The fact that Dr. Hendelman consulted with Dr.  
12          Jansen that day, and told him it is obvious this patient  
13          needs to be admitted, I think, brings us well within  
14          garden-variety negligence. If something is obvious,  
15          it's obvious. It's not hidden, it's not concealed.  
16          It's not some big secret.

17          Going back to what we were talking about yesterday,  
18          when we were arguing the bifurcation motion, Calvin Hunt  
19          didn't go off and do these things some days later. He  
20          didn't even do them some hours later. My client's son  
21          was dead less than 20 minutes after Calvin Hunt left the  
22          emergency room.

23          With all due respect to the Court of General  
24          Sessions, I think it's pretty safe to assume that, if he  
25          was not guilty by reason of insanity the second he saw

1 the fire truck and the second he killed a human being,  
2 he probably wasn't -- didn't have all of his wits about  
3 him when he was still in the Defendant's employees' line  
4 of sight.

5 So, this is a -- I hate to say it, Judge, but this  
6 is a case where, I think, really, common sense and  
7 things being obvious can lead us to sufficient evidence  
8 in the record, such that we can survive directed  
9 verdict, just like we survived summary judgment,  
10 without, necessarily, a retained expert.

11 I retained an expert, because the Defendant's  
12 retained an expert, and said they got a guy who's a  
13 doctor up at Trident Hospital in North Charleston. He  
14 says the actions and inactions of the folks, the CasePro  
15 employee, that day were appropriate. That was his word,  
16 appropriate.

17 I think I can make this representation at this  
18 point. She sometimes punches me if I say things she  
19 doesn't like.

20 It would be my expectation that, if our retained  
21 expert came to testify in this courtroom, while he may  
22 have standard of care opinions, that it would be our  
23 expectation at this point in time that the questions  
24 that we would ask him on direct would be confined to  
25 whether or not he believed actions or inactions were

1 appropriate or not appropriate.

2 I think we can try this case without ever uttering  
3 the words *standard of care*. That's, at least, the way I  
4 view the *Hardee* case, and the way that we've pled this  
5 as a simple negligence case. But I'm certainly happy to  
6 answer any additional questions that your Honor has on  
7 that point.

8 THE COURT: Okay.

9 MR. MACKELCAN: Your Honor, there's a number of  
10 things to respond to, and I want to start with Dr.  
11 Hendelman, because she was mentioned repeatedly. While  
12 all of this was happening, Dr. Hendelman was on the  
13 fourth floor of the Naval Hospital. She's a G.S.  
14 federal employee. She is a 60-something, I'm not sure  
15 exactly, board-certified psychiatrist. She is a medical  
16 doctor. She is a psychiatrist, and she was the doctor  
17 employed by the government on that day.

18 She's not an E.R. doctor. She didn't offer any  
19 opinions as to the conduct of the E.R. doctor or the  
20 nurses. Dr. Hendelman's information came from a  
21 psychiatric technician who was a gentlemen who --  
22 active-duty military, specifically trained to interview  
23 mental health patients.

24 This is a young man in his mid-twenties, who  
25 testified that he had interviewed at least 1,500

1 military men who were having mental health problems. He  
2 had a standard set of questions that he asked all of  
3 them. He testified in his deposition that he was  
4 familiar with suicidal ideation. He knew the difference  
5 between ideation and plan and intent, and he understood  
6 homicidal ideation. And he'd dealt with people with  
7 PTSD.

8 Although not a medical doctor, he was the first  
9 step that Dr. Jansen took, and this is pursuant to  
10 hospital policy, to get a psychiatric consultation. Mr.  
11 Manning was the last person to communicate from a  
12 medical standpoint with Mr. Hunt, before Mr. Ray asked  
13 for them to go outside.

14 Mr. Manning took the findings of his 25-minute  
15 interview with Mr. Hunt, that happened in the emergency  
16 room, where everybody could hear. There was no raising  
17 of voices. There was no problem. These are separated  
18 by curtains. Okay? Joe McDonald was ten feet from  
19 Arthur Manning while this is going on.

20 Manning finishes up his interview. He says, okay,  
21 we'll see you later. Doesn't say anything to anybody in  
22 the emergency room; goes upstairs and talks to Dr.  
23 Hendelman.

24 So, this idea that Dr. Hendelman used the word  
25 obvious to Dr. Jansen, and that means that it's ordinary



1 negligence, I think, is a real stretch.

2 You know, we're talking about somebody who has  
3 received a report from the psyche tech of his interview.  
4 Then, she calls an emergency room doctor. They're on  
5 the phone. Dr. Jansen's in his office in the emergency  
6 room. Dr. Hendelman never bothers to go downstairs.  
7 She stays up on the fourth floor. Despite Dr. Jansen's  
8 request that she see the patient, she stays up there.

9 And Dr. Jansen is a 60-something physician, board-  
10 certified, emergency room doctor. So, what is obvious  
11 to two medical doctors with a combined 75 years of  
12 experience as doctors, is certainly not obvious to the  
13 average, ordinary person, which is what the standard  
14 would be here.

15 THE COURT: In other words, you do not think this  
16 is a *Bessinger versus DeLoach* case?

17 MR. MACKELCAN: No. And so, the other thing is,  
18 this expert's depositions, Dr. Jansen -- we did joint  
19 discovery in this case, your Honor. There were five  
20 cases, and we corroborated for awhile and did joint  
21 discovery. There were five plaintiffs' attorneys in  
22 there asking him questions. The deposition lasted over  
23 nine hours. So, to pull out bits and pieces of things  
24 that he said, I don't think is an accurate reflection of  
25 his testimony.

1 I also want to address what Mr. Hoyle said that I  
2 said, early on in this case with a motion to dismiss.  
3 We did initially file a motion to dismiss, based on  
4 failure to comply with the expert affidavit statute.  
5 Upon Mr. Hoyle's conversation with him, he said, well,  
6 we're not -- this is an ordinary negligence case, and  
7 we're, you know, common sense exception and all that.  
8 And that was why that statement was made.

9 I hadn't made a determination at that point whether  
10 it was or whether it wasn't. I was relying on his  
11 representations of how he intended to pursue the case.  
12 Clearly, maybe that was a mistake at this point, and I  
13 should have pursued that, but that was very early on in  
14 this case, based on a representation from another lawyer  
15 about how they intended to proceed with their case.

16 The part of this, though, that is crucial, that Mr.  
17 Hoyle didn't address at all, and also ties into the last  
18 thing I was discussing, the 131-page contract that, in  
19 great detail, outlines the relationship between CasePro  
20 and the United States Navy, Page 21 has a specific  
21 section that deals with lawsuits, and how that's  
22 supposed to work. And it's U.S.C. 10, 1089, I believe  
23 is the number. And it says, if there's a personal  
24 injury based on the acts or omissions of these  
25 healthcare workers while they're working at the Naval

1 Hospital, you've got to follow the *United States Code*  
2 for that lawsuit.

3 And it doesn't specify medical malpractice. It  
4 doesn't specify who the patient is, any of that. It's,  
5 if there is a personal injury suit based on the actions  
6 of these workers, you go 1089. The language in the  
7 Plaintiff's complaint in Paragraphs 40 and 50 is  
8 specifically designed to circumvent that paragraph in  
9 the contract, because it says that's does allege acts of  
10 medical negligence, and actually references 1089.

11 So, even if, where, because Justin Miller wasn't a  
12 patient, this isn't a medical malpractice case under the  
13 *South Carolina Code*, and the requirements for, you know,  
14 pre-suit affidavit notice and intent and all that. It  
15 is clearly a medical negligence case under 1089, and  
16 under the contract.

17 I think, in hearing the Plaintiffs talk about these  
18 distinctions, I think your Honor probably got a feel for  
19 the issue that we have here. There was reference to,  
20 maybe not by name, but reference to the *Dawkins* case by  
21 the facts. And *Dawkins* case was where the language is  
22 pulled from the idea that not every case against a  
23 medical provider is a medical malpractice case.

24 Well, the *Dawkins* case involved an older woman who  
25 was presented at the emergency room with balance issues

1 and dizziness. Her daughter brought her there; told the  
2 whoever was up front that, that was the problem; asked  
3 if she could go back with her into the room; and they  
4 said, no, you can't. They took her back in the room;  
5 left her there; she fell and broke her ankle.

6 The Court was very specific that no medical  
7 treatment had been provided to Mrs. Dawkins at the time.  
8 And the supervision, they noticed specifically that the  
9 daughter was not allowed to go back there with her.

10 In this case, we have Mr. Hunt who presented with  
11 Mr. Ray, Veterans Affairs Officer. Whether he was in  
12 his official capacity or not, he was with Mr. Hunt the  
13 entire time. Never left his side. He was with him  
14 before he even got to the emergency room. He had met  
15 with him earlier that day, so he was there the entire  
16 time.

17 But importantly, they get to the Naval Hospital,  
18 and they go to the general practice area. They speak  
19 with a nurse. Medical judgment and treatment begins  
20 before CasePro personnel are even involved. She takes  
21 him down to the emergency room. Janice McDonald does a  
22 triage. We've got records of it. She takes him to the  
23 bed.

24 Joe McDonald is watching him for an hour and a  
25 half, observing him. They have some limited

1 interaction, but he's watching him. And Mr. Ray, who's  
2 been sitting by him the whole time.

3 Dr. Jansen meets with Calvin Hunt. We have a  
4 record of that. We've got our blowups for you to see.  
5 I mean, evaluating the patient, he contacts for a  
6 consultation, pursuant to Naval policy. Psyche tech  
7 comes down, and we've already talked about the psyche  
8 tech, and you know what happens from there.

9 So, the differences are extreme in terms of  
10 medical treatment. There is no question in this case,  
11 Calvin Hunt received considerable medical treatment  
12 while he was at the Naval Hospital, both from CasePro  
13 personnel and from government employees and active-duty  
14 military. Really significant difference there.

15 And this all goes to the confusion of the jury.  
16 Are they supposed to evaluate as to how a nurse or a  
17 doctor should treat a patient, or the ordinary person?

18 I mean, this is, you know, there is a lot of --  
19 you've seen the motions in limine. There's issues about  
20 whether medical records were presented, or whether they  
21 should have been looked at, whether they were even  
22 available. How do you deal with somebody with mental  
23 health issues? Clearly, within the context of a medical  
24 negligence case, it's not the same as somebody who  
25 doesn't get any medical treatment, is left by herself in

1 a room before anybody sees her, and she falls. That's a  
2 slip-and-fall. Okay? This isn't a slip-and-fall  
3 premises liability case, and that's really the basis of  
4 our position on it.

5 It's going to be prejudicial to CasePro for them  
6 to present all of this professional negligence-type.  
7 It's not just the term *standard of care*; it's all that  
8 is encompassed in medical duties and medical  
9 obligations, performance in medical care, that is  
10 prejudicial to CasePro. The jury is hearing all these  
11 things that they should have or shouldn't have done.

12 THE COURT: I got you.

13 MR. MACKELCAN: Okay.

14 THE COURT: I'm with you. That was very helpful.  
15 Yes.

16 MR. HOYLE: Your Honor, just a few points. Let me  
17 start where Mr. Mackelcan began. He talked a lot about  
18 Arthur Manning. Arthur Manning was an enlisted man in  
19 the United States Navy, who is not a licensed healthcare  
20 provider professional in any jurisdiction. He has an  
21 MOS, a psychiatric tech. That's something that is  
22 unique to the military. That's not something that's  
23 recognized in the civilian world.

24 Let me go back to the Hardee case. Hardee, which  
25 was written by Chief Justice Toal in 2006, confirms the

1 language I cited to you from *Bishop*; that a medical  
2 malpractice action is instituted by a patient, and is  
3 predicated upon the physician's deviation from accepted  
4 standards of professional care in treating that patient.  
5 Not every cause of action asserted against a medical  
6 provider, however, is an action.

7 THE COURT: Brilliance.

8 MR. HOYLE: I've been slapped. For medical  
9 malpractice. Thus, our statement in *Bishop* affirms the  
10 validity of the general rule prescribing the class of  
11 permissible plaintiffs in medical malpractice actions.  
12 That ain't us.

13 But going back to the case, it also recognizes that  
14 causes of action may accrue in other context, by virtue  
15 of the medical provider's actions or admissions.

16 Let me talk a little bit about *Hardee*. *Hardee* is  
17 another good, old-fashioned, common-sense case.  
18 Fellow's in there getting dialysis treatment. They  
19 could have given him some milk. Probably not milk, but  
20 they could have given him some juice and cookies, told  
21 him to wait 15 minutes before he left driving his car.  
22 They didn't do any of that.

23 He gets in his car. Less than 15 minutes later, he  
24 runs a red light, because he's passed out, and he kills  
25 two people. I think, if you read -- it's a short

1 opinion, but if you read in between the lines, I think  
2 our court really believed in *Hardee*; that this was a  
3 case that cried out for there to be a duty, because it  
4 was good, old-fashioned common sense.

5 And in fact, the *Hardee* case actually says that the  
6 argument presented by the plaintiff in that case was at  
7 a healthcare facility, quote:

8 *Breached a duty a medical provider*  
9 *owes to those persons in the general field of*  
10 *danger, that is the motoring public, which*  
11 *should reasonably been foreseen by the*  
12 *respondent when it administered the treatment.*

13 Again, this is going back to foreseeability, which  
14 we learned about in law school. And it's clear in the  
15 *Hardee* case that the plaintiff is not bringing a medical  
16 malpractice case. They can't. They're not a patient.

17 I think a good example or analogy of this is, if  
18 you were to think about a few months ago, when we had  
19 the fear in this country about Ebola, and if you were to  
20 think back to that time frame, I believe even former  
21 DHEC Director Templeton even pretended to have Ebola,  
22 and went into the Roper hospital in Charleston, just to  
23 see what they would do when she presented with certain  
24 symptoms.

25 But imagine somebody going into an emergency room



1 and saying, I just got back from West Africa; I've got a  
2 fever; I'm bleeding in places I don't want to go, I  
3 don't want to be bleeding from. And instead of the  
4 hospital or the emergency room admitting them, and  
5 keeping them there, the person says, hey, can I leave;  
6 and they say, yes. And then, that person goes out to  
7 Walmart, and a hundred people get Ebola.

8 The touchstone in that scenario is whether or not  
9 it was foreseeable that the person who had come there  
10 seeking treatment, if they weren't kept under close  
11 watch, could harm others within the general field of  
12 danger.

13 Mr. Mackelcan referred to the *Dawkins* case as a  
14 slip-and-fall. Well, I'll respectfully submit that the  
15 *Hardee* case is a car wreck case who was somebody running  
16 a red light, because they passed out less than 15  
17 minutes after they left the healthcare facility.

18 And this case, it's also a car wreck case. It may  
19 just be a fire truck, but it's still a motor vehicle  
20 collision. A pedestrian that was lawfully on the  
21 roadway in Beaufort County was struck and killed,  
22 because persons did not exercise good, old-fashioned  
23 common sense and tell somebody that they knew was a  
24 danger to others to stay where he was. Instead, they  
25 affirmatively gave him permission to leave. I think,

1 just like our scenario with Ebola, that's pretty  
2 obvious.

3 THE COURT: Got it. I got it, you all. I got it.  
4 Do you disagree that's what it is? That's not what it  
5 is? I got it.

6 All right. Make sure that I have those cases on  
7 both your parts. Just make sure I have them. And we're  
8 going to get to it, so let's take ten-minutes' comfort  
9 break for anyone; and then, we're going to come on back.

10 Yes?

11 MR. MACKELCAN: Can I just make one quick request.

12 THE COURT: Sure.

13 MR. MACKELCAN: Going back to before we start  
14 talking about the ordinary professional, you had  
15 mentioned the videos and the photos and the 911.

16 THE COURT: Yes.

17 MR. MACKELCAN: Based on the presentation at  
18 mediation, I anticipated a lot of that being in the  
19 opening. And so, I was wondering if that's something  
20 you could look at before.

21 THE COURT: I'm going to, but I hadn't seen them.

22 MR. MACKELCAN: Okay.

23 THE COURT: Now, unless you can as they come in.

24 MR. HOYLE: And your Honor, I'll represent, I've  
25 written the opening. I know what I'm going to say. I'm

1 not showing the video from the fire truck. I'm not  
2 showing the autopsy pictures at opening. I'm going to  
3 show some childhood pictures of my client that Mr.  
4 Mackelcan has seen, and some photographs, and an aerial  
5 map. I'm not showing anything that anyone needs to have  
6 any concern about.

7 THE COURT: All right. Here's what I need you to  
8 do during the break, is you reassure Mr. Mackelcan has  
9 seen what you intend to show this jury, and be sure  
10 there's no objection.

11 MR. HOYLE: Okay.

12 MR. MACKELCAN: And then, the other question was,  
13 the second part of beneficiary motion dealt with whether  
14 the Plaintiff can present evidence of the damages of the  
15 two brothers. I wasn't totally clear that was part of  
16 the ruling, as well.

17 THE COURT: Survival, and then, the estate. What  
18 about the survival action? would be my response back to  
19 you.

20 MR. MACKELCAN: Well, the damages in the survival  
21 action are the damages of Justin Miller.

22 THE COURT: Of the estate, right?

23 MR. MACKELCAN: Well, no. The damages are  
24 calculated to Justin Miller's damages.

25 THE COURT: Right. Of the estate. His. In other

1 words, the estate stands in his shoes, correct?

2 MR. MACKELCAN: Correct. But what I'm asking about  
3 is whether evidence of the grief and sorrow and loss of  
4 the brothers, which are the calculation of damages under  
5 the wrongful death statute, that is what we had moved to  
6 exclude.

7 THE COURT: Yes, I understand. It's excluded.

8 MR. MACKELCAN: Okay.

9 THE COURT: Because those would be the damages of  
10 the decedent in the survival action.

11 MR. MACKELCAN: Correct. And I just want to make  
12 sure we were clear on that.

13 MR. HOYLE: Your Honor, and just for clarification  
14 purposes, because I hope Mr. Mackelcan doesn't stand up  
15 a half a dozen times in my opening, I am going to  
16 reference the fact that Justin Miller had brothers. I'm  
17 not going to talk about the fact that they grieved for  
18 their brother's death, but I think I should be allowed  
19 to introduce who the decedent was, and who his family  
20 was, and where he came from, and those kind of things.  
21 Background information for the jury.

22 MR. MACKELCAN: We don't have any problem with that  
23 as purely related to the damages.

24 THE COURT: Got you. Okay. Great. Great. You  
25 all take ten minutes.

1 OFF THE RECORD 10:41 A.M.

2 BACK ON THE RECORD 10:50 A.M.

3 BY THE COURT:

4 BAILIFF: Thank you so much. Court is now back in  
5 session.

6 THE COURT: Thank you so much, and please be  
7 seated.

8 MR. MACKELCAN: I've got a copy of Hardee and  
9 Dawson, if you want them.

10 THE COURT: Yay, my hero. Thank you. In between  
11 Mr. Hoyle and Mr. Mackelcan, you all have got me in good  
12 shape. Thank you so much. Both of you. I appreciate  
13 it.

14 Who's going to make the opening for the Plaintiff?

15 MR. HOYLE: I will, your Honor.

16 THE COURT: Who's going to make the openings for  
17 the Defendant?

18 MR. LOVELL: I am, your Honor.

19 THE COURT: Wonderful. I just -- because I like to  
20 tell the jury that. Great.

21 MR. HOYLE: And your Honor, we will be moving --  
22 need to move the monitor that's on wheels closer to the  
23 jury box, as well as set up some easels, in order to --  
24 for my opening. Do you want us to do that now, or after  
25 the jury comes in? When do you want us to make those

1 logistical arrangements?

2 THE COURT: Have you seen -- have you all seen  
3 everything that they --

4 MR. MACKELCAN: Yes. Yes, ma'am.

5 THE COURT: Anybody got any concerns?

6 MR. MACKELCAN: No.

7 THE COURT: Yea.

8 MR. HOYLE: And we have no concerns with their  
9 demonstrative items.

10 THE COURT: Yes, go ahead and do that now. Go  
11 ahead and set that up now. And are you going to show  
12 the boards? Is that why the boards?

13 MR. HOYLE: I have three boards and a monitor.

14 THE COURT: I need you to do two things for me.  
15 Mark the boards for identification purposes, and if you  
16 have a tape of what's going to be on the monitor, I need  
17 that marked for identification purposes. If not, just  
18 get with Wanda at some point and mark it for  
19 identification purposes. Okay? Great.

20 MS. CASTLEBERRY: Judge, I have a question. I  
21 anticipate that some of the photographs may be sought to  
22 be admitted into evidence, so I know there will be some  
23 objections. So, we'll just take that as we go along,  
24 correct?

25 THE COURT: That's exactly right. That's exactly

1 right.

2 MS. CASTLEBERRY: I definitely wouldn't publish  
3 anything. I just would, you know, consult with whoever  
4 is going to take that witness, and then, we'll approach  
5 and you can --

6 THE COURT: Absolutely.

7 MS. CASTLEBERRY: Okay.

8 THE COURT: Absolutely.

9 MS. CASTLEBERRY: Thank you.

10 BAILIFF: Now, you're going to lose the view of the  
11 jury. Is that okay with you?

12 THE COURT: No, it's not, actually. Just move it  
13 just a tiny bit. Bing. You're done. That's perfect.  
14 That's perfect.

15 Oh, and do we have pen and paper for the jurors to  
16 write? Pen and paper.

17 MR. HOYLE: You want me to go sit back up here,  
18 Judge?

19 THE COURT: Say what?

20 MR. HOYLE: You want me to go sit back in the jury  
21 box?

22 THE COURT: No.

23 MR. HOYLE: Or are you satisfied that you have a  
24 view of the panel?

25 THE COURT: Do we have the file from the clerk's

1 office? Do we have the file from this case from the  
2 clerk's office?

3 MADAM CLERK: Huh-uh. I can call them.

4 THE COURT: That would be lovely.

5 MADAM CLERK: I'll speak to them about it.

6 THE COURT: Great.

7 MR. MACKELCAN: Your Honor, one additional matter.  
8 We've got a motion to bifurcate punitive damages, in  
9 addition to the motion for a separate trials, and we  
10 didn't talk about that. I wanted to make sure that was  
11 --

12 THE COURT: Oh, you stinker, you. I was just  
13 thinking about that. Yes, yes. And just wanted -- so,  
14 you have done that. Okay.

15 MR. MACKELCAN: We have done that.

16 THE COURT: I understand. Now, how do you perceive  
17 that going forward?

18 MR. MACKELCAN: My interpretation is that it's a  
19 matter of right, so.

20 THE COURT: It is. It is. It absolutely is.

21 MR. MACKELCAN: I just wanted to raise that,  
22 because it hadn't been.

23 THE COURT: I was just looking at your answer.  
24 Your answer is that these people don't work for us; and  
25 therefore, they work for the government; it's not us.



1 So, what your position is, if there is liability that is  
2 found, then, any punitive damages would go forward in a  
3 bifurcating manner. Yes?

4 MR. MACKELCAN: Yes.

5 THE COURT: Okay. And your response? It is a  
6 matter -- it's the shall. It's the shall.

7 MR. HOYLE: I don't think there's much I think of.

8 THE COURT: It's the shall. Yes, yes, I got it. I  
9 was just looking --

10 MR. HOYLE: Elections have consequences, Judge.  
11 That's all I'll say.

12 THE COURT: Exactly. But I am so glad you  
13 clarified that, because I knew that was a question. I  
14 just asked my law clerk.

15 MR. MACKELCAN: And that was why I called the other  
16 motion the rule for separate trials, so that they were  
17 distinct, but.

18 THE COURT: Perfect. Perfect. Okay. That's  
19 correct. All right. So, all right.

20 I want to talk about, as a practical matter, we'll  
21 talk about how we do that, on whether or not I charge  
22 punitive damages. It wouldn't be my intention to charge  
23 punitive damages unless there is a determination of  
24 liability, more likely than not, because this is going  
25 to be confusing. Because what -- and the reason for

1 that is, that I inject clear and convincing evidence  
2 into, then, what would be a liability determination, in  
3 an actual damage determination; that the jury we're  
4 dealing with, whether or not there is liability, whether  
5 or not there are actual damages, so that I would not  
6 charge the issue of punitive damages, unless there was a  
7 finding of liability (a); and then, actual damages (b).

8 You all understand? I'm sorry I'm barking at you  
9 all with my voice. I apologize for the quality of my  
10 voice. But that would be my inclination at that point.  
11 And the reason that, that's where I am at this point,  
12 because when I give them the beginning charge, I talk  
13 about the burden of proof. You've got -- you've pled  
14 negligence on behalf of third parties.

15 MR. MACKELCAN: Oh, okay.

16 THE COURT: And comparative negligence, which, of  
17 course, has a burden of proof that belongs to the  
18 defendant. And so, I wanted to be sure that I could --  
19 that, as I went through that, to talk about the greater  
20 weight or the preponderance of the evidence. And I'm  
21 not going to talk to them with regard to clear and  
22 convincing evidence until that becomes an issue.

23 MR. HOYLE: And your Honor, just for my  
24 clarification, you referenced the Defendant's answer in  
25 which the third party, then, the United States of

1 America. The United States of America has been  
2 dismissed from this action. There is no pending third-  
3 party claim by CasePro, Incorporated, against the  
4 government. I just wanted to make sure --

5 THE COURT: Negligence, he raises negligence of  
6 third parties. Intervening negligence.

7 MR. HOYLE: I just wanted to tell you.

8 THE COURT: And I'm not going to get into that.  
9 I'm just going to put that there are defenses that are  
10 raised for which the Defendant has the burden of proof.  
11 Only --

12 MR. HOYLE: I was checking.

13 THE COURT: Only as a -- and I do that, only in the  
14 context of briefly going over the burden of proof.

15 MR. HOYLE: Thank you, your Honor.

16 THE COURT: So they don't think it's beyond a  
17 reasonable doubt, quite frankly. So.

18 MR. HOYLE: I understand everything you just said.  
19 Thank you, Judge.

20 THE COURT: Got it. Great. Everybody ready? Can  
21 you believe it?

22 MR. HOYLE: Plaintiff's ready.

23 THE COURT: Thank you.

24 MR. LOVELL: We are, your Honor.

25 THE COURT: Thank you. Let me have the jury.

1 BAILIFF: Yes, your Honor.

2 BAILIFF: Are you ready, your Honor?

3 THE COURT: I'm ready.

4 BAILIFFS: All right. Jury's entering the  
5 courtroom, your Honor.

6 THE COURT: Thank you.

7 JURY ENTERS COURTROOM 11:09 A.M.

8 THE COURT: Good morning, ladies and gentlemen.

9 RESPONSES FROM JURORS.

10 THE COURT: You hate to begin your good morning,  
11 ladies and gentlemen, with an apology, but alas, that's  
12 where I find myself, and it's really truthful this  
13 morning. Everybody please be seated.

14 First of all, I apologize for keeping you in your  
15 jury room. I am absolutely aware of every tick of the  
16 clock that you are in your jury room, which is why, when  
17 we began yesterday and I said that part of your jury  
18 service is going to be cooling your heels, if you'll  
19 remember that comment, and that's what that is. And the  
20 reason for that, I can assure you, we're not out here  
21 telling jokes and having a big time. There are just  
22 certain things that I must do.

23 And daggone it, inevitably, it takes me longer than  
24 I think it's going to, to take me, and the longer that  
25 I've been doing this job, you think it would take me

1 less time, and I always think it's going to take me less  
2 time than it does. So, I apologize for keeping you in  
3 your jury room while I do the things that I needed to  
4 do.

5 So, please know that we are certainly aware -- I am  
6 certainly aware that you are in your jury room,  
7 hopefully, getting to know a little bit about each  
8 other. You might find out you're related by the end of  
9 this trial. But we are certainly aware that you are in  
10 there. And what we're working on is to try to let me do  
11 the work that I must do, and hopefully, to clarify some  
12 issues, which will, in the end, perhaps, limit the time  
13 that we'll be here together.

14 The second thing that I want to apologize for this  
15 morning is my voice. I'm losing it. I don't always  
16 sound like this. And I probably shouldn't say this, but  
17 I see it as God's message to my husband. When I lose my  
18 voice, he's doing what he's supposed to be doing,  
19 because twice a year, I lose my voice for three days.  
20 It gives him a break. So, in any event, this --  
21 apparently, he's been a good man for the first part of  
22 the year, because I've now lost my voice.

23 So, ladies and gentlemen, I apologize to you for  
24 barking at you, and if you have difficulty either  
25 hearing me or understanding me, please do not hesitate

1 to raise your voice, and say, okay, Dillon girl, try  
2 that again. Because it is important that you are able  
3 to (a) hear -- I'm not working, am I? And (b) --  
4 understand what I'm saying to you. So, please keep that  
5 in mind. It will not hurt my feelings if you raise your  
6 hand and say, I cannot hear you; I cannot understand  
7 you. So, please don't hesitate to let me know that.

8 Now, ladies and gentlemen, in just a moment, you  
9 are going to be sworn in as a jury in this case. And  
10 then, I am going to make some preliminary remarks to  
11 you, and we will get right into the trial of this case.  
12 At this time, please stand, and raise your right hands  
13 to be sworn. Each of you, raise your right hand as you  
14 are sworn in as a jury in this case.

15 JURORS SWORN, BY MADAM CLERK:

16 MADAM CLERK: Good morning. Do you solemnly swear  
17 or affirm that you shall well and truly try the issues  
18 joined in this case, and a true verdict give, according  
19 to the evidence, so help you God?

20 RESPONSES FROM JURORS.

21 THE COURT: Thank you. And please be seated. And  
22 was there anyone who did not take the oath? Wonderful.

23 GENERAL CHARGE, BY THE COURT:

24 THE COURT: Now, ladies and gentlemen, the case  
25 that we're about to try is the case of Rebecca Delaney

1 as the personal representative of the estate of Justin  
2 Nicholas Miller, who is the plaintiff, versus CasePro,  
3 Inc., who is the Defendant. The plaintiff is the person  
4 who has brought the action against a defendant.

5 Ladies and gentlemen, the defendant in this case is  
6 CasePro, Inc., a corporation. It is an entity.  
7 However, because it is an entity does not mean that it  
8 is not entitled to any --

9 BAILIFF: I'm trying to get to the circuit to cut  
10 that microphone, so it doesn't back feed, your Honor.

11 THE COURT: Perfect. Thank you.

12 BAILIFF: Sorry.

13 THE COURT: Thank you for your technological  
14 brilliance. All right. Thank you. Because I know that  
15 was a problem yesterday, so thanks for that very much.

16 BAILIFF: It's quite all right.

17 THE COURT: Because, obviously, I need it right.

18 So, ladies and gentlemen, I've just introduced the  
19 case to you. The Defendant is a corporation. Under our  
20 law, a corporation is entitled to the same measure of  
21 justice, same measure of justice, as would be the  
22 natural person. We do not distinguish under our law  
23 between entities and natural persons. Each required to  
24 and entitled to the same measure of justice as would be  
25 a natural person. So, I want to begin with that.

1           Now, ladies and gentlemen, before we begin this  
2           trial, I want to tell you that this trial probably will  
3           be different from what you might expect. I'm going to  
4           ask if you'll just take this board down for me. Hello.

5           Many people do not have the chance to attend  
6           actual court sessions, as you are now doing. And they  
7           think, from watching television or movies, or reading  
8           books, that trials are always full of high drama,  
9           intense action, riveting circumstances.

10          I will tell you, ladies and gentlemen, that, while  
11          all of these things may be true at times, this trial is  
12          not for entertainment. It is a fundamental part of our  
13          democracy, a search for the truth, and an effort to make  
14          sure that justice is done between the parties before the  
15          Court. Search for the truth, and making sure that  
16          justice is done is often slow, deliberate, and  
17          repetitive, the opposite of what you may have seen on  
18          television or on movies, or read in books.

19          Ladies and gentlemen, this courtroom, lo, this  
20          courthouse, is a place of honor, dedicated to the  
21          protection and preservation of citizens' rights through  
22          what many have called, and I submit to you, the greatest  
23          system of justice that people have ever created.

24          Ladies and gentlemen, the attorneys appearing  
25          before you are advocates for the parties they represent.



1 But before they were ever allowed to represent the first  
2 client, they were sworn as officers of the Court, and  
3 they are sworn to uphold the integrity and the fairness  
4 of our judicial system, and to help you in the search  
5 for the truth in their role as advocates for their  
6 clients.

7 You should expect them to be professional,  
8 competent, and ethical in their representation of their  
9 clients' interests. And remember that you have taken an  
10 oath to try this case and to reach a fair and just  
11 verdict. And you're expected to be professional,  
12 reasonable, and ethical.

13 I want to thank you for accepting this most  
14 important responsibility of jury service, and for your  
15 contributions to our justice system.

16 Now, I want to talk to you about how we're going to  
17 proceed. I'll begin by talking to you a little bit  
18 about your note keeping, because you probably want to  
19 know if you can take notes now, so let's talk about  
20 that.

21 Ladies and gentlemen, there is an ongoing debate  
22 about the taking of notes. It has been ongoing for as  
23 long as I have been a judge, and that's been a long  
24 time. And the debate goes like this: there is a  
25 concern about note taking, and that concern is that

1 judges and others worry that jurors can miss something  
2 as it's coming from the witness stand while they take a  
3 note. They can have their attention diverted taking a  
4 note, and miss something as it comes from the witness  
5 stand.

6 So, I'm going to tell you, do not allow the taking  
7 of a note to allow you to miss something as it's coming  
8 from the witness stand. I will tell you that listening  
9 to the witnesses, observing the witnesses, is more  
10 important than the taking of a note.

11 The other criticism, concern, about note taking is  
12 that, during deliberation, if one juror has a note, and  
13 another juror doesn't have a note, that there can be an  
14 undue amount of influence placed upon the note. I'm  
15 going to tell you now that your ability to take notes is  
16 provided to you, and to you, individually. Your notes  
17 are not to be shared with anyone during deliberations,  
18 so don't expect you to hold up your notes and say, I  
19 must be right, because I got a note. Your notes are  
20 for you. For you to choose to take a note or not, take  
21 a note, it is solely up to you.

22 Some folks are -- and I'm one of these people. It  
23 helps me sometimes to write a word or two, because it  
24 aids my concentration. It's easier for me to  
25 concentrate if I can write a word or two. And oftentimes,

1 I'll go back and look at my notes, and they're not  
2 particularly helpful. The taking of a note or two is  
3 only helpful to aid me and assist me in concentration.  
4 You use your note pad however it may be helpful to you.  
5 There's no requirement to take notes. If you're a note  
6 taker, enjoy taking a note. If you are not a note  
7 taker, put it down; don't worry about it, because it's  
8 there to assist you, if it assists you, and for no other  
9 reason.

10 Your notes are to be shared with no one else, and  
11 I will tell you that your notes are there to allow you  
12 to refresh your recollection, prior to our  
13 deliberations, if that's helpful for you.

14 So, I don't want you to feel any pressure to take a  
15 note. It is much more important for you to listen to  
16 the witnesses, and to observe the witnesses, to listen  
17 to the Court, listen to these attorneys, than it is to  
18 take a note. It's simply to allow you the ability, if  
19 it is of assistance for you to take a note.

20 Now, here's what we're going to do. First, you  
21 have a what? A page? Has everybody -- yes. You had,  
22 like, a cardboard front. Why don't you turn that over.  
23 That's perfect. Now, turn your cardboard front over,  
24 and on that very first page, write your juror number.

25 Did we give you the -- did you get the trick pen?

1 You got the trick pen. We can get you another writing  
2 implement in here.

3 COURT REPORTER: Tom? Just make sure it works.  
4 And it does.

5 THE COURT: Well, better the trick pen than the  
6 whoopie cushion, right? Now, thank you for that.

7 If your writing implement stops, we have other  
8 ones. If you run out of paper, we have more paper. So,  
9 please, just let us know. Just write the juror number  
10 on that sheet of paper, and tuck that sheet of paper in,  
11 turn it over. Yeah. All right. In other words, when  
12 you open your cardboard, you'll see your juror number.  
13 You turn that page over, and that will begin your notes,  
14 if you choose to take them.

15 Now, every time that we leave each other, you'll  
16 leave your notepad in your seat or under your seat,  
17 whichever is your pleasure. We will protect them during  
18 the breaks. We'll guard them during lunch. We will  
19 guard them at the end of the day. You don't take your  
20 notepads back and forth with you.

21 Now, what the bailiffs, no doubt, will do is  
22 collect them, and return your notepads to you, which is  
23 why I wanted you to put your juror number on that sheet,  
24 because bailiffs can look at your notepad number, and  
25 not look at your notes.

1           Let me share with you what happens to the notes,  
2           just so you know. When you have completed your service  
3           on this jury, and you've completed your deliberations,  
4           if you, at that time, wish to take your notes with you,  
5           you just tear them out, and take them with you. That is  
6           perfectly fine.

7           If you don't take your notes with you, let me tell  
8           you what happens. Your notepads are brought to my  
9           chambers, and I take them out, and I tear them up, and I  
10          obliterate them, so that no one would see your notes.  
11          The reason I mention this to you now is so that you  
12          understand that there is anonymity and there is privacy  
13          in those notes. I will tear them up myself. They come  
14          to me. If you were to take them home, that's perfectly  
15          fine. But if you don't, that's perfectly fine, too.  
16          They come to me, and I actually, myself, risk the paper  
17          cut by tearing them up. So, that's what will happen to  
18          your notes. All right.

19          Now, ladies and gentlemen, before this case begins,  
20          I want to tell you how we're going to be proceeding.  
21          The first thing that will occur is that you're going to  
22          hear opening statements from an attorney from each side.  
23          You're first going to hear from Mr. Hoyle in his opening  
24          statement, on behalf of Ms. Delaney, who is the personal  
25          representative of the estate of Justin Nicholas Miller.

1 And then, you're going to hear an opening statement from  
2 Mr. Lovell, on the behalf of the defendant, CasePro,  
3 Inc.

4 Now, what are opening statements? Well, opening  
5 statements are an opportunity for each side to discuss  
6 with you what they believe the issues are in this case.  
7 They also may want to outline what they believe the  
8 testimony will show. They are not arguments. Those  
9 arguments will come at the conclusion of the case.

10 The purpose of the opening statement is just as I  
11 have explained, to allow each side to introduce their  
12 case to you. Once the opening statements are finished,  
13 then, each side will have an opportunity to present  
14 evidence to you.

15 What is evidence? Well, evidence may take many  
16 forms. It will be sworn testimony of witnesses. It may  
17 be photographs. It may be diagrams and the like.

18 Ladies and gentlemen, it is so important that you pay  
19 close attention to all the evidence that is presented by  
20 each side.

21 Ladies and gentlemen, be mindful that evidence  
22 comes it one piece at a time, and it is absolutely  
23 essential that you pay close attention to all the  
24 evidence that is presented by each side.

25 Now, ladies and gentlemen, once the evidence has

1       been received, Plaintiff will go first. The Defendant  
2       will have an opportunity to present evidence, and once  
3       the evidence is in, then, each side will have an  
4       opportunity to present what are called closing arguments  
5       to you.

6               Now, those are true arguments, and what I mean by  
7       that is, that, each side, no doubt, will emphasize  
8       certain portions of the evidence to try to convince you  
9       to agree with their version of the facts. I want you to  
10      keep in mind, ladies and gentlemen, that what the  
11      attorneys say is important, but also keep in mind that  
12      what the attorneys say is not evidence. The evidence  
13      comes from the sworn witnesses in the case, and from any  
14      exhibits which are admitted into evidence.

15             Now, once the arguments are finished, I will  
16      explain to you the law which is applicable to this case.  
17      You will then retire to your jury room, and you will  
18      make the findings of fact. And then, you will take the  
19      law and apply the law to those facts. And that is how  
20      you will reach is verdict, which will then be a true and  
21      just verdict under the oath that you just took.

22             Now, ladies and gentlemen, I want to talk about the  
23      burden of proof in this case. The Plaintiff has the  
24      burden of proving her claims. The Defendant has pled  
25      what are called affirmative defenses, and as to those

1 affirmative defenses, the Defendant has the burden to  
2 prove those affirmative defenses. I will be more  
3 specific with you when I give you the concluding  
4 instruction on the law, but I wanted to explain to you  
5 the burden of proof that is applicable in this case.

6 Ladies and gentlemen, you may be familiar with the  
7 burden of proof applicable to a criminal case. It seems  
8 to be, perhaps, a little more common knowledge in our  
9 communities, and that is beyond a reasonable doubt.  
10 That is not the burden of proof that is applicable to a  
11 civil case, and this is a civil case.

12 The burden of proof that is applicable in a civil  
13 case is by the greater weight or the preponderance of  
14 the evidence. By the greater weight or the  
15 preponderance of the evidence, and I'm going to explain  
16 that to you in three different ways. The first way that  
17 I'm going to tell you is with words, and I will tell you  
18 that, if you are considering an issue, if it is more  
19 likely true than not true, if it is more likely true  
20 than not true, the preponderance has been met.

21 I'm going to give you two visual examples about  
22 what we mean when we talk about the greater weight or  
23 the preponderance of the evidence. I want you to  
24 imagine the set of scales, and as you are considering  
25 Plaintiff's claims and the Defendant's defenses, as you



1 consider each, if those scales should remain evenly  
2 balanced, or tip in favor of the opposing side, then,  
3 the side who is propounding, either the claim or the  
4 defense, will have failed to meet her or its burden of  
5 proof.

6 If, however, when you're considering the  
7 Plaintiff's claim or the Defendant's defense, if the  
8 scale should tip ever so slightly in favor of the claim  
9 or affirmative defense, then, the Plaintiff or the  
10 affirmative defense will have met their burden of proof.

11 Ladies and gentlemen, thirdly, if you are  
12 considering Plaintiff's claim, I want you to imagine for  
13 the claim a football field of evidence. It's great  
14 during football season, because I can do this. Anything  
15 beyond the 50-yard line, the preponderance has been met.  
16 Imagine the affirmative defense for the Defendant.  
17 Football field. Anything beyond the 50-yard line of  
18 evidence, the preponderance has been met.

19 The effect of that, I will give you more  
20 instruction when I give you the concluding instruction,  
21 but I did want you to understand what we mean by the  
22 burden of proof is by the greater weight or the  
23 preponderance of the evidence.

24 Now, ladies and gentlemen, I want to talk a little  
25 bit about our duties, because we have different duties.

1 You are the finders of the facts in this case. You're  
2 the judges of the facts. Ladies and gentlemen, no one  
3 else will be permitted to weigh the evidence in this  
4 case and to render a decision about what the facts are  
5 in this case but you. You are the sole, you are the  
6 only, you are the exclusive judges of the facts.

7 The facts as deemed by a trial jury, as determined  
8 by a trial jury, are the facts for all time, because  
9 under our system of justice, there's ordinarily no way  
10 to correct an erroneous determination of the facts by  
11 trial jury. Those are simply the facts for all time.

12 So, if I do anything, or I make any gesture, or I  
13 say anything that you think may be indication of an  
14 opinion regarding the facts by me, I'm going to ask you  
15 at this moment, please disregard it, because it's  
16 unintended. Ladies and gentlemen, the law does not  
17 allow me to have an opinion regarding the facts. I  
18 don't have an opinion regarding these facts. That is a  
19 matter solely for you to determine.

20 So, if I do or say something with regards to the  
21 facts, and you think that I've done, please disregard  
22 that, because I can assure you, it's unintended, because  
23 I don't have an opinion regarding these facts. The law  
24 doesn't let me have an opinion. I don't have an  
25 opinion. So, if I've done something or said something,

1 please disregard that, because it's certainly  
2 unintended.

3 Now, ladies and gentlemen, it is my duty to  
4 determine the law applicable to this case. I'm the  
5 judge of the law in this case. That's my duty. If you  
6 came into court, and you had an opinion regarding what  
7 the law is, or what it ought to be, and it should differ  
8 from what I tell you the law is, well, maybe you want to  
9 have a conversation with your legislator at some point  
10 in the future, but for our system to work correctly, you  
11 must accept and you must apply the law exactly as I  
12 state it to you.

13 I cannot tell you what the facts are, and you  
14 cannot disagree with me about what the law is. You must  
15 accept it, and apply it exactly as I state it to you.  
16 And again, the way that, that would work is that, once  
17 you have this case for your deliberation, then, you'll  
18 make the determination of fact. You'll make findings of  
19 fact, and you'll take the law as I give it to you, and  
20 you'll apply it to those facts. And that is how you  
21 will render your verdict.

22 Now, again, if you came into court with a  
23 preconceived idea about what the law is, you are, by  
24 your oath, now obligated to abandon that preconceived  
25 idea, because you must accept the law as I give it to

1       you.

2               Now, how does that work during the course of the  
3 trial? I'm going to talk to you a little bit about  
4 that, simply so you'll understand what is happening.  
5 Ladies and gentlemen, no doubt, at some point during  
6 this trial, you're going to hear these lawyers say,  
7 objection, and I want to explain to you what is  
8 occurring.

9               You now know that a trial is an organized activity.  
10 As in sports or business, or any other structured  
11 activity, there are certain rules that both sides must  
12 obey when presenting evidence. These rules have a  
13 purpose. The purpose is to ensure that the information  
14 that you receive is the most trustworthy and reliable  
15 information that's available.

16              Our rules of evidence cover the presentation of  
17 information to a trial jury. These lawyers are  
18 obligated, under those rules of evidence, to call a  
19 possible violation of the rules to my attention. It is  
20 their duty. And because it is their duty, you must not  
21 hold an attorney's objection against his or her client;  
22 nor should you conclude, from my ruling on the  
23 objection, that I favor one side or the other, because I  
24 can assure you, I do not.

25              It is my duty to rule on the admissibility of

1 evidence. So, if you hear one of these lawyers say  
2 objection, what that does is, that says to me that I  
3 must determine the admissibility of evidence. In other  
4 words, is that piece of evidence, that piece of  
5 testimony, piece of evidence, admissible at all, or not.

6 But ladies and gentlemen, once it is admitted,  
7 whether or not you believe it, the weight you give to  
8 it, and the inferences that you draw from it are a  
9 matter solely for you to determine.

10 These attorneys will say, objection. They also may  
11 say, your Honor, we have a matter of law; or they may  
12 say, your Honor, may we approach. I want you to know  
13 that, when they say objection, I very well may be able  
14 to rule on the objection; I'll know the basis for the  
15 objection and make a rule on it. If I overrule the  
16 objection, that means I don't think that there's been a  
17 violation, and that bit of testimony or evidence can be  
18 received. If I say that the objection is sustained,  
19 that means that bit of testimony or evidence cannot be  
20 received in the fashion or form in which it is being  
21 offered.

22 Now, ladies and gentlemen, if I ask the lawyers to  
23 approach, or, if I, from time to time, need to ask you  
24 to exit the courtroom so that I can hear a matter  
25 outside your presence, what I'm doing is that, I may

1 need to hear a word or two from the lawyers, or perhaps  
2 a little more from the attorneys, to allow me to rule on  
3 the admissibility of that evidence.

4 No one's trying to keep anything from you. It's  
5 simply to allow me the ability to hear a little bit from  
6 the lawyers, and I wouldn't want anything that I might  
7 say in ruling on the admissibility of evidence to be  
8 construed by you as a comment on the facts. So, that's  
9 the reason that I'll ask them to approach, or,  
10 occasionally, may need to ask you to step to your jury  
11 room. It is just to give me the space, the ability, to  
12 do the work that I must do.

13 Now, ladies and gentlemen, with regards to our  
14 presiding juror, I want to talk just a little bit about  
15 your duties. They are very simple. They are very  
16 simple. They're very limited, and I don't intend to  
17 give to you control over the jury, or control over the  
18 jury's deliberation or consideration. They're very,  
19 very limited.

20 It's just that, in the event that the jury needs to  
21 communicate with me, for example, it's too hot, it's too  
22 cold, we're having trouble understanding you, we're  
23 having trouble hearing, that somebody is designated to  
24 write it down, and give it to one of our bailiffs, to  
25 give it to me. It's pretty simple. It's just to be

1 sure that, during the deliberations, that just everybody  
2 -- somebody has to say, okay, anybody else have anything  
3 to say; has everybody had an opportunity to say what  
4 they need to say. And somebody's got to be the  
5 scrivener. Somebody has to write.

6 So, rather than -- it is just to allow some order  
7 as to those very simple matters. It isn't beyond that.  
8 It isn't to give to the presiding juror any kind of  
9 control over the jury or the jury's activities or the  
10 jury's deliberation.

11 However, however, it is important that you remember  
12 that you are, during the course of this trial, not to  
13 talk about this matter, not to discuss this matter with  
14 anyone, to include your fellow jurors. You are not to  
15 talk about this case or anyone who has anything to do  
16 with it, until I specifically say it is time to begin  
17 your deliberations.

18 You must rest assured that you will know, without a  
19 shadow of a doubt, that the time for you to talk about  
20 this matter has come, because I'm going to tell you that  
21 the time to begin your deliberations has come. I will  
22 be specific. I will be clear. Until that time has  
23 come, you must not discuss this case, or anyone who has  
24 anything to do with it, with your family, your friends,  
25 or your fellow jurors.

1           You must not discuss this case with anyone, and you  
2           must not do any kind of investigation. You must not  
3           visit the Internet. You must not do any kind of  
4           investigation. You must not read anything. You must  
5           not listen to anything about this case that might be in  
6           the news, on the radio, television, or on the Internet,  
7           or in the newspaper.

8           Ladies and gentlemen, it is absolutely critical  
9           that you receive all of the information for which you  
10          will make up your minds here in Court, while Court is in  
11          session. In fact, should anyone try to talk to you  
12          about this matter, to include your fellow jurors, I ask  
13          you to get their name or a description, if it's somebody  
14          that you don't know, and you can't get their name, and  
15          report that to me upon your return to the courthouse,  
16          and I will deal with that individual.

17          Now, ladies and gentlemen, I finally urge you to  
18          pay close attention to these witnesses. Listen to them,  
19          observe them. Please do not let your thoughts wander,  
20          so that, at that conclusion of all the evidence and the  
21          arguments of counsel and my charge on the law, you will  
22          be prepared to deliberate, and to take the law as I give  
23          it to you, and apply it to the facts as you find them to  
24          be, and thus, render a truly just verdict.

25          And lastly, ladies and gentlemen, if you are a



1 person who concentrates with your eyes closed, in that I  
2 don't know you very well, and I don't know that you are  
3 concentrating with your eyes closed, I may think, and  
4 I'm sure wrongfully, that you are sleeping. I know none  
5 of you would do that.

6 So, so that I don't make that error, I'm going to  
7 ask you to please listen with your eyes, concentrate  
8 with your eyes open, so that I will not make that  
9 mistake that you are sleeping. Because if you are  
10 concentrating with your eyes closed, and I misconstrue  
11 that you are sleeping, it would be necessary for me to  
12 take action to be sure that you're awake and not asleep.

13 Ladies and gentlemen, in order to preserve  
14 everyone's rights, I will now turn to these parties, and  
15 see if they have any additional objections to my opening  
16 remarks. From Plaintiff?

17 MR. HOYLE: None from the Plaintiff.

18 MR. MACKELCAN: None at this time, your Honor.  
19 Thank you.

20 THE COURT: Very well. Ladies and gentlemen, I ask  
21 that you please draw close as we listen to the opening  
22 statements of our attorneys.

23 Mr. Hoyle.

24 MR. HOYLE: May it please the Court, your Honor?

25 THE COURT: Yes, sir.

## 1 OPENING STATEMENT ON BEHALF OF

2 THE PLAINTIFF, BY MR. HOYLE:

3 MR. HOYLE: Picture in your mind two brothers.  
4 Young men, inseparable, both created in the image of  
5 their Maker, and both living a life that, despite  
6 challenges, have lived together at the Stewart Town  
7 Apartments in Port Royal, and Hunting Island State Park,  
8 at the Beaufort County Public Library.

9 February 24, 2012, begins like any other Friday.  
10 Tonight is going to be movie night in front of the T.V.  
11 Justin, the younger of the two, his mother's middle  
12 child, will make dinner. The weekend will have  
13 activities at church. They talk about World of Warcraft  
14 and model trains. Christopher, the oldest, complains  
15 that they're out of Captain Crunch.

16 The two brothers, both of whom live in an apartment  
17 by themselves, walk everywhere. In fact, they walk  
18 several miles each day. February 24, 2012 is no  
19 exception and like any other day, until a few minutes  
20 after 4:00 o'clock in the afternoon, when tragedy  
21 strikes, because a doctor and two nurses didn't do what  
22 they should have done. The evidence will show that the  
23 doctor and the two nurses should have used common sense.

24 Let me back up. While Justin and Chris were out  
25 walking that day, visiting the library, going into town,

1 not that far away, another young man was not having a  
2 good day. In fact, he had recently not had many good  
3 days at all. Calvin Hunt, a young man from South  
4 Carolina, who had enlisted in the Marine Corps following  
5 high school graduation, and subsequently had gotten into  
6 some trouble, was living here in Beaufort County, living  
7 with his mother and other families.

8 Calvin's family became concerned. They were  
9 worried about him, because he had quit taking his anti-  
10 psychotic medication, and he wasn't acting right.  
11 Arrangements were made for Calvin to go the Naval  
12 Hospital here in Beaufort. He arrives around 2:00  
13 o'clock in the afternoon on that Friday with a family  
14 friend, 59-year-old gentleman named Edward Ray, who  
15 worked for the County as a Veterans Affairs officer.  
16 The two men arrive at the base, go into the Naval  
17 Hospital, and they go upstairs.

18 You'll hear testimony from a lady by the name of  
19 Koren Pope. Ms. Pope has trouble finding Calvin Hunt in  
20 the computer system, so she calls one of her colleagues,  
21 a nurse, Sandra Smith, who also lives here in Beaufort  
22 County. And Ms. Sandra Smith asked Mr. Ray and Mr.  
23 Hunt to come on back to her office.

24 Now, Ms. Smith, who is a registered nurse, doesn't  
25 have any trouble finding Calvin Hunt in the computer

1 system. She's able to pull up his records, and she's  
2 able to see some of the medications that he needs to  
3 have refilled. But it's a Friday afternoon, and in this  
4 part of the Naval Hospital, which is essentially the  
5 family practice part of the hospital, they call it the  
6 Medical Homeport, there's not a doctor. There's not a  
7 doctor present, so there's nobody to write a  
8 prescription that day.

9 Nurse Saundra Smith offers to make Mr. Hunt an  
10 appointment, so that he can come back on Monday; and she  
11 also says that, if he wants to get his prescriptions  
12 refilled that day, that he can go downstairs to the  
13 emergency room.

14 As they work through the logistics of making that  
15 appointment for the following Monday, Calvin Hunt, this  
16 young man, let's out a sign. And Nurse Saundra Smith, a  
17 trained, registered nurse, has some concern. And you'll  
18 hear her testimony, perhaps even later today, about what  
19 she did in response.

20 In response to that concern, she asked him a  
21 question, because she wanted to know if he was okay. In  
22 response to that question, Calvin told her that he had  
23 thoughts of killing himself. Immediately, Ms. Smith, a  
24 registered nurse, who, without question, is a civilian  
25 employee of the Department of the Navy, walks Mr. Hunt

1 and Mr. Ray downstairs, to the emergency room.

2 But the emergency room is a little bit of a  
3 different creature than the Naval Hospital. The  
4 evidence will show that the E.R. at the Naval Hospital  
5 in Beaufort, back in 2012, had been outsourced, and the  
6 doctor and the nurses who were there that day were  
7 actually getting their paychecks from a company called  
8 CasePro out in Texas.

9 For almost two hours, Calvin Hunt, this young man  
10 who enlisted in the Marine Corps, had gone off overseas,  
11 in service to his country, is the only patient, the only  
12 patient, in what one of the witness you will hear from  
13 will describe as an itty-bitty emergency room. It's got  
14 four beds in it. You're just separated by a curtain.  
15 And if you were to imagine in your mind's eye, the left  
16 portion of the gallery of this courtroom, essentially,  
17 from where the rail at your jury box ends, all the way  
18 to that wall, back there by the window, that's about the  
19 size of the emergency room.

20 In fact, you'll hear testimony from one of these  
21 witnesses that, if somebody in one part of the E.R. were  
22 to sneeze, somebody in a different part of the E.R.  
23 could say bless you. It's that small.

24 Working in the emergency room that day was one  
25 medical doctor, just one, and two registered nurses.

1 About 30 minutes after Calvin's brought down to the  
2 emergency room, the one doctor who's there goes and  
3 talks to him. The doctor writes in the medical records  
4 that Calvin, to him, appears to be disoriented. And  
5 importantly, he also writes in the medical records,  
6 that, by his own admissions, Calvin told him that, not  
7 only did he have suicidal thoughts, he also had  
8 homicidal thoughts.

9 That's right. On February 24, 2012, while two  
10 young men named Justin and Chris were out walking the  
11 streets in Beaufort County, a young man named Calvin  
12 told a doctor in an emergency room right here in  
13 Beaufort County, that he had thoughts of hurting other  
14 people.

15 Now, despite the fact that Calvin is the only  
16 patient in this itty-bitty E.R., the doctor, Dr. Jansen,  
17 who gets his paycheck from a company in Texas, Dr.  
18 Jansen does not order his nurses to call security, keep  
19 Calvin within their line of sight, or to prevent Calvin  
20 from leaving, even though he knows that he has, in his  
21 emergency room, a United States Marine, with all of the  
22 training that goes along with that, who's off his anti-  
23 psychotic medication, who has thoughts of hurting  
24 others.

25 During this almost two hours that Calvin sits there

1 as the only patient, the doctor, Dr. Jansen, calls  
2 another physician on the telephone, a psychiatrist by  
3 the name of Beverly Hendelman. Dr. Hendelman doesn't  
4 get her paycheck from a company in Texas. She gets her  
5 paycheck from the U.S. Treasury. And Dr. Hendelman  
6 tells Dr. Jansen on the telephone that it's obvious that  
7 Calvin needs to be admitted. Obvious. Dr. Jansen even  
8 writes that down in the records that, that's what Dr.  
9 Hendelman told him, that it was obvious.

10 Despite all this, as the clock nears 4:00 o'clock  
11 in the afternoon, one of the E.R. nurses, a gentleman  
12 that you'll see on this witness stand, Joe McDonald, who  
13 also gets his paycheck from a company out in Texas, gave  
14 Calvin and the man who brought him, Edward Ray,  
15 permission to leave. The evidence will show, you'll  
16 hear this testimony from Joe McDonald himself, that he  
17 was asked, can we get some fresh air. To which he  
18 responded with a single word: yes.

19 Now, I suspect many of you know where the Naval  
20 Hospital is, but for those of you that don't, this is an  
21 aerial view of the Naval Hospital. It's a pretty big  
22 complex, and the emergency room sits on the first floor  
23 roughly in here.

24 This is Ribaut Road, a road that many of you  
25 likely travel on as part of your daily lives. And over

1 here, less than a tenth of a mile away from the Naval  
2 Hospital, sits an apartment complex, an apartment  
3 complex named -- that's the Laurel Hill Apartments.

4 The evidence is going to show, ladies and  
5 gentlemen, that, shortly after Joe McDonald gave Calvin  
6 Hunt permission to walk out of the emergency room and  
7 walk out of the Naval Hospital, that Calvin Hunt began  
8 disrobing, taking his clothes off; and then, he ran from  
9 the outside of the Naval Hospital to the Laurel Hill  
10 Apartments.

11 At the Laurel Hill Apartments, there was a medical  
12 emergency. The Laurel Hill Apartments, you see, are  
13 apartments for senior citizens, and on that day, there  
14 had been a medical emergency, a 911 call made, because  
15 somebody, an older gentleman, had fallen out of the bed,  
16 and his wife wasn't able to get him up.

17 And the way it works in Beaufort County is that,  
18 sometimes, an ambulance will respond when there is a  
19 medical emergency, but oftentimes, firefighters can get  
20 there quicker. And on this day, a fire truck was  
21 dispatched to the Laurel Hill Apartments, so that those  
22 brave firefighters, using their EMT training, could tend  
23 to the man who fell out of his bed. That man would  
24 later die that day.

25 Calvin Hunt, by the time he gets from there to



1 here, is completely naked; climbs into the fire truck;  
2 and he proceeds to leave the Laurel Hill Apartments and  
3 travel on Ribaut Road. He's going to travel down Ribaut  
4 Road in the direction of Parris Island. And then, at  
5 some point, dramatically, he's going to make a u-turn in  
6 a fire truck, and he starts back up Ribaut Road the  
7 other way. And along the way, he's going to strike  
8 numerous vehicles. He's not accidentally hitting these  
9 vehicles, ladies and gentlemen. These are intentional  
10 acts.

11 As he makes his way up Ribaut Road, the Highway  
12 Patrol will later estimate he was driving in excess of  
13 50 miles an hour in a fire truck. And he comes back up  
14 Ribaut Road, and he gets near a location that some of  
15 you all may be familiar with. We'll talk about it more  
16 as it goes on. It sits in between the Dollar General  
17 and the bowling alley on Ribaut Road. And the fire  
18 truck's all the way over here, in the right-most lane of  
19 travel, and it begins to turn. The reason it begins to  
20 turn is because there's two boys, two young men, Justin  
21 and Chris, walking down the road.

22 All of that happens less than 20 minutes. About  
23 the time it takes to cook grits, after Nurse Joe  
24 McDonald said yes, Justin Miller is dead. His older  
25 brother, Christopher, who's with him, screams in horror.

1           The evidence is going to show in this case, ladies  
2           and gentlemen, that this harm should never have  
3           happened, because a person presenting to a doctor with  
4           thoughts of hurting others, with a history of depression  
5           and suicidal thoughts, needs to be admitted and kept  
6           under close watch until that can happen. The evidence  
7           will show you this is especially true that these  
8           concerns are by the patient's own admission.

9           In other words, if someone has thoughts of hurting  
10          others, the concern is self-explanatory, common sense.  
11          As Dr. Hendelman told Dr. Jansen, it is obvious that a  
12          person who says he wants to hurt others is in need of  
13          hospitalization and supervision. Obvious means obvious.

14          In this case, the defendant on trial is not the  
15          United States Navy. The defendant is not Calvin Hunt.  
16          The defendant is a company from Texas called CasePro,  
17          Incorporated. And although diversified, this company's  
18          primary business is providing personnel to staff U.S.  
19          military clinics that the government has decided to  
20          outsource.

21          Now, one of CasePro's defenses in this case is  
22          that Dr. Jansen and the two nurses that Dr. Jansen was  
23          working with that day were not really their employees,  
24          and that they should be cleared of liability.

25          The evidence will show, however, that, for each of

1 the three persons in the E.R., Dr. Jansen, Nurse Joe  
2 McDonald, Nurse Janice McDonald, that CasePro reviewed  
3 their applications for a job in this outsourced E.R.;  
4 that CasePro reviewed the qualifications and credentials  
5 of these three persons; that CasePro hired each of the  
6 three and gave them an employee handbook; made them sign  
7 a bunch of company policies, like a drug use and alcohol  
8 use policy, a sexual harassment policy. Any of you all  
9 who have ever had a job know what that is.

10 The evidence will also show that CasePro determined  
11 how much money Dr. Jansen and the two nurses were going  
12 to make. Determined how many days off they're going to  
13 have; how many weeks of vacation they were going to  
14 have. How much they were going to contribute as a match  
15 to 401(k).

16 CasePro out in Texas actually issued a paycheck  
17 every pay period to Dr. Jansen and these two nurses;  
18 made deductions for Social Security, FICA; and issued  
19 them a W-2 every January. They even provided the  
20 Workers' Compensation insurance in case they got hurt on  
21 the job.

22 In addition, CasePro actually scheduled when and  
23 how often these people were going to work. Whether or  
24 not they were working on a Tuesday or a Thursday, that,  
25 that was a decision made out of Texas. That's what the

1 evidence is going to show.

2 In addition, the evidence will show that CasePro  
3 determined any pay raises these three folks got, whether  
4 or not their benefits were going to change. And most  
5 important, the evidence is going to show that CasePro  
6 had the ability to fire Dr. Jansen, Nurse Joe McDonald,  
7 or Nurse Janice McDonald, if he or she was not up to  
8 par.

9 Now, in this community, here in Beaufort County,  
10 CasePro had a contract for several years to provide one  
11 medical doctor and two registered nurses for each hour  
12 of the day that the emergency room was open at the Naval  
13 Hospital in Beaufort. In other words, that's 24/7, 52.

14 If someone went into the emergency room at 2:00  
15 o'clock in the afternoon, 2:00 o'clock in the morning,  
16 they were not going to be treated by somebody wearing a  
17 military uniform who was a doctor or nurse, but rather  
18 an employee of CasePro.

19 The evidence will show, though, that, in 2010, some  
20 two years earlier, some two years prior to this tragedy  
21 that brings us here today, some two years prior to that  
22 fateful Friday, the commanding officer, commanding  
23 officer, the high-ranking military official of the Navy  
24 base, wanted a doctor gone, wanted him fired. And that  
25 doctor was Dr. Jansen. But Dr. Jansen didn't wear a

1 uniform. He wasn't in the Navy. He didn't have to  
2 return a salute. Instead, he got his paycheck from  
3 CasePro, and a CasePro CEO made the decision not to fire  
4 him, despite the commanding officer's concern.

5 Now, following Justin's death on that fateful  
6 Friday, and CasePro being served with this lawsuit, all  
7 the way back in November of 2012, you may wonder whether  
8 or not CasePro acknowledged a mistake, said that its  
9 doctor messed up, or accepted responsibility. Well,  
10 obviously, folks, here we are. And ladies and gentlemen  
11 of the jury, I submit that, that's exactly what  
12 courthouses are for.

13 If you go back in history some 800 years, where  
14 water met on side the River Thames in England, King John  
15 of England agreed to a list of freedoms that were going  
16 to be protected. Among those rights protected forever  
17 was the right to a trial by jury.

18 You know, I took my boys, who are four-and-a-half  
19 and sixteen months to Charlestown Landing two weekends  
20 ago, before the floods. And it was interesting to go  
21 out there and see where the English first came to South  
22 Carolina in 1670.

23 I learned a few things. I learned that, when they  
24 came over here, to what we now know as South Carolina,  
25 they brought with them 23 cannons, and apparently, five

1 or six cats. But they also brought with them those  
2 lists of freedoms that King John had agreed to several  
3 hundred years earlier in England. And actually, if you  
4 were to look at our *Constitution* today for South  
5 Carolina, you would see words about a right to trial by  
6 a jury that word-for-word from the *Magna Carta*. And I  
7 think that's remarkable, because this is a tradition  
8 that you all have embarked upon that dates back 800  
9 years. So, let me say thank you to each and every one  
10 of you.

11 I would respectfully submit that there is no  
12 greater service that you can perform on behalf of your  
13 community than being a part of this tradition of juries  
14 deciding disputes, in which the least powerful among us  
15 can seek amends for wrongs done by even the most  
16 powerful. And that is the case here.

17 I know that yesterday was exhausting, ladies and  
18 gentlemen, but I hope that you can tell by all of the  
19 questions yesterday and the attention that you were  
20 paid, that this is a significant, important case, not  
21 only for Justin's family and for CasePro, but for this  
22 community, which, for almost three years, actually, over  
23 three years, has wanted questions about how and why this  
24 tragedy happened.

25 Now, as this trial continues, ladies and gentlemen,

1 you will hear much evidence, and you should remember the  
2 words of the Judge of what is said by me and Mr. Lovell  
3 making a statement is not evidence. And I'm going to go  
4 ahead and warn you, there's going to be a lot of  
5 evidence. Some of that evidence will come from  
6 witnesses that testify live on that witness stand. Some  
7 of the evidence will come from witnesses who are  
8 testifying because of where they are or who they work  
9 for, by videotaped deposition, on television screens.  
10 And there will also be photographs, documents, and  
11 perhaps, even some videos that you will see and  
12 consider. There will also be other evidence in this  
13 case.

14 I will respectfully submit, ladies and gentlemen,  
15 that I fully anticipate that the lawyers on the other  
16 side will talk to you, not just about what happened in  
17 the emergency room that day, but they may also talk  
18 about Justin and his family.

19 As I mentioned earlier, at the beginning, both  
20 Justin and his older brother Christopher had some  
21 difficulties. Both of them were young adults living  
22 independently, living together. The both of them on the  
23 autism spectrum. These two young men also have a  
24 younger brother, Donovan Delaney, who also is on the  
25 autism spectrum. This is a family who has a number of

1 challenges.

2 You will hear some evidence in this case about the  
3 mother, Rebecca Delaney, my client, who's sitting right  
4 here, who, herself, has had a number of health issues, a  
5 number of surgeries, and who, herself, is also disabled.  
6 But I don't want you to get distracted by any of that.  
7 I don't want you to take your attention away from  
8 anything that tries to confuse you or lead you away from  
9 what one doctor and two nurses did on that fateful  
10 Friday.

11 As the Judge told you, as part of your service, you  
12 are going to have to determine this case by the  
13 preponderance or the greater weight of the evidence,  
14 meaning whether or not it is -- imagine those scales,  
15 whether or not it is ever so slightly more likely than  
16 not. Or to use the Judge's football analogy, whether or  
17 not the nose of the football breaks the plane of the 50-  
18 yard line. You, and you alone, will determine whether  
19 or not the persons who knew the most about Calvin Hunt  
20 on February 24, 2012 were negligent, and whether or not  
21 that negligence was a cause of Justin's death. In other  
22 words, ladies and gentlemen, each of you, collectively,  
23 are going to decide whether some good, old-fashioned  
24 common sense could have prevented this tragedy.

25 I respectfully ask that you pay good attention,



1 listen to all the evidence, and know that I will talk to  
2 you again at the end of this trial. But until then, I  
3 want to reiterate, this is a lawsuit not about a naked  
4 man, not about a fire truck. This is a lawsuit about  
5 common sense, a lawsuit about how we treat our service  
6 members. A lawsuit about how we treat the mentally ill.  
7 This is a lawsuit about responsibility. Tragically,  
8 this is a lawsuit about those who failed to care for  
9 service members and needlessly endangered the public.  
10 The result in this case, like so many others, was the  
11 death of an innocent person.

12 MR. HOYLE SHOWING PHOTOGRAPHS TO JURY.

13 MR. HOYLE: This tragedy shouldn't happen to a  
14 pedestrian along Ribaut Road. It just shouldn't. Not  
15 in your community. Because all a nurse had to do was  
16 say no, instead of yes.

17 THE COURT: Thank you, Mr. Hoyle. Mr. Lovell?

18 MR. LOVELL: Thank you, your Honor.

19 THE COURT: Yes.

20 OPENING STATEMENT ON BEHALF OF

21 DEFENDANT, BY MR. LOVELL:

22 MR. LOVELL: Good morning.

23 RESPONSES FROM JURORS.

24 MR. LOVELL: On behalf of CasePro, I want to thank  
25 you for the time you spent yesterday and the time you're

1 going to spend with us for the rest of the week.

2 This case is about a little more than just common  
3 sense. And the Judge is going to tell you, as we get to  
4 the end of the case, she's going to instruct you on the  
5 law. But I want to point out a couple things I'd like  
6 for you to focus on. Excuse me. Let me get my flip  
7 chart.

8 Unfortunately, I'm not a very high-tech lawyer.  
9 So, I like the charts and documents, and I want to talk  
10 to you about a couple things. As we go through this  
11 case, there are really four points I'd like for you to  
12 think about. The Plaintiff has pled in this case that  
13 this is a case of, he calls it, common sense, of  
14 ordinary negligence. But as you go through the case, I  
15 believe the evidence will show you that this case is not  
16 really about that.

17 This is a case about medical care rendered by  
18 medical professionals in assessing a patient who  
19 presented to them, and their assessments are judged in  
20 the condition the patient that day with the information  
21 they have. So, as you listen to the evidence, ask  
22 yourself, has the Plaintiff really met their burden of  
23 proof; have they proven what they've set out here. Is  
24 this really just an ordinary care case, or is this  
25 something more that required more from these physicians

1 than just what you or I or lay people walking in off the  
2 street could do in judging this patient.

3 Secondary, I want you to focus on, are the signs  
4 and symptoms that were present with Calvin Hunt when he  
5 was in front of Nurse Janice McDonald, Nurse Joe  
6 McDonald, Dr. Jansen; even when he was in front of the  
7 Psychiatric Tech Manning, who came and saw him in the  
8 E.R.; or even the signs and the symptoms that Dr.  
9 Hendelman had, the psychiatrist who assessed him,  
10 really, by phone, she wouldn't come down to the E.R. at  
11 Dr. Jansen's request.

12 But also, as you go through, look very carefully at  
13 what symptoms were not present; that he did not tell any  
14 of these four, five providers, I have a plan to hurt  
15 myself; I have a plan to go hurt someone else.

16 You'll hear the testimony about what he told each  
17 of these people, and I ask that you listen very  
18 carefully on that, because it's an important issue as  
19 these professionals are assessing this patient.

20 Another thing that's a part of this case that we  
21 have to take into consideration is a little bit of how  
22 the medical care facility that he's at has to act with  
23 regard to the patient, Mr. Hunt. You know,  
24 unfortunately, patients have rights, too. You can't  
25 just put them in handcuffs the first time they say I've

1 had thoughts of hurting myself; maybe in the past I've  
2 had thoughts of hurting others, but I don't have a plan.  
3 You can't put them under medical restraints or physical  
4 restraints. Until you've had a chance to have them  
5 assessed fully, have discussions with them about it, you  
6 can't do that. Patients' rights come into this, and  
7 you'll hear more about that as the trial goes along.

8 And the other issue that I ask that you to consider  
9 as you go about -- and this is something at the end of  
10 this trial I anticipate the Judge will talk to you  
11 about, and it's a legal issue. It's a legal concept,  
12 and it's what is foreseeable. I call it foreseeability,  
13 to make it into one word. What is the normal and  
14 natural things that you would expect to occur when faced  
15 with a patient like this, who comes in with the signs  
16 and symptoms that he presents with, and things that he  
17 doesn't present with. What are the reasonably  
18 foreseeable things that might happen?

19 At the end of this case, when we do our closing  
20 argument, you'll hear us say on this issue here, from  
21 the testimony -- you'll hear from every healthcare  
22 provider, Ms. Pope; Ms. Smith, Nurse Smith; Nurse Janice  
23 McDonald; Nurse Joe McDonald; Dr. Jansen; from Mr.  
24 Manning, the psychiatric tech; and even Dr. Hendelman --  
25 the one thing that's not foreseeable is what happened in

1       this case; that a guy who was in the hospital  
2       voluntarily; who came on his own free will, with Mr.  
3       Ray, who is a friend of his family; seeking a medication  
4       refill; that gentleman who stays in the medical clinic  
5       with Ms. Pope and with Ms. Smith, voluntarily, the  
6       evidence is going to show you the time frames. I ask  
7       that you listen to those. When they talk to him -- and  
8       you'll hear the testimony of Ms. Smith about how she  
9       elicited from Mr. Hunt this idea that he had thoughts of  
10      hurting others. It didn't come out with him coming in  
11      and saying, you know, I'm thinking about hurting others.  
12      You'll hear the testimony. But listen to that  
13      carefully.

14             But when she heard him say that, after she had  
15      talked to him about filling medications and getting an  
16      appointment for Monday, once that happened, she said,  
17      you know, that clicked something in the Naval Hospital,  
18      at this point, you're going to the E.R. to be evaluated,  
19      because something's not right.

20             Well, Mr. Hunt and Mr. Ray, who were there  
21      together, walked calmly down with Ms. Smith to the E.R.  
22      You'll hear testimony that he was in the E.R.  
23      voluntarily, with Ms. Janice McDonald, the triage nurse.  
24      You'll hear her tell you about how she observed him that  
25      day.

1 And one thing you're going to see, and you'll get  
2 tired of looking at it by the end of the trial, are a  
3 bunch of medical records. And you will have the  
4 originals with you, when you go deliberate. You'll have  
5 a triage sheet from Nurse McDonald, and I ask that you  
6 look at the things that she's listed on here. Now,  
7 she's given history when the patient comes in from  
8 Saundra Smith, the clinic nurse, that he has had  
9 suicidal ideations. What's not present - plan, active  
10 plan. She gets a history. Also, he's got some alcohol  
11 and drug dependence, depression. He's got post-  
12 traumatic stress disorder.

13 So, she knows at this point this is someone I'm  
14 going to triage in my E.R., and I'm going to get him to  
15 an E.R. doctor as soon as I can. He came in to her at  
16 about 2:17. She takes the medical history. And she'll  
17 tell you about her ability to communicate with Mr. Hunt,  
18 but he was communicative with her. He could tell her  
19 about certain parts of his medical history; that he  
20 smoked; he had depression; some medications he was on.

21 She'll tell you when she saw him, he looked alert;  
22 he was oriented to person, place, and time. You'll hear  
23 all these things, and the reason that I point them out  
24 in opening, ladies and gentlemen, as you listen to the  
25 testimony, think about what the providers, the nurses,

1 and the doctors that were seeing this gentleman at the  
2 time were faced with. Was it foreseeable this patient  
3 with these signs and symptoms was going to go do what he  
4 did ultimately?

5 This is the second page of the triage note. You'll  
6 again see the nurse's comments:

7 *He's alert; oriented to place and time;*  
8 *his speech is clear.*

9 Again, signs and symptoms that aren't present:  
10 he's not agitated; he's not combative; he's not  
11 uncooperative.

12 You'll see all this evidence. I ask that you  
13 listen very carefully to the testimony and to the  
14 statements from the nurses when they talk to you about  
15 what they were observing. The patient stayed in the  
16 triage room voluntarily with Janice McDonald. She told  
17 him at the conclusion, you're now going to go into the  
18 E.R. and be seen by an E.R. doctor; there's a  
19 possibility they may do some tests; there's a  
20 possibility you may be admitted; but he'll talk to you  
21 about that.

22 Mr. Hunt voluntarily walked into the E.R. with this  
23 -- with Ms. Janice McDonald. He went into Bay 4. And  
24 Mr. Ray's with him the whole time. The man who came  
25 with him, who helped him come to the hospital, the V.A.

1 representative, is a friend of his grandmother's, stays  
2 with him the whole time, goes into Bay 4. The nurses  
3 will tell you and the evidence will show you that they  
4 put him in Bay 4 for a reason, because it's the closest,  
5 in a very small environment, to the nursing station,  
6 where Joe McDonald, Janice McDonald's husband, who's  
7 also a nurse at the hospital, would be observing  
8 everybody. It's also right near the E.R. doctor's room,  
9 where he can see what's going on. So, the patient was  
10 put in there, he was supervised, he was observed.

11 Within 20 minutes of him coming in, Dr. Jansen was  
12 sitting in there talking to him. You're going to hear  
13 the evidence that, at the time that Dr. Jansen talked to  
14 him -- and again, you'll have records of what's going  
15 on. The evidence will show you, he looked for certain  
16 things. He takes a history from the patient.

17 You'll hear the evidence about the chief  
18 complaints. He had some suicidal thoughts. He was  
19 depressed. But he was really there for medication  
20 refill. The reality is, that's what brought him to the  
21 Naval Hospital to start. He ran out of his medications,  
22 but he was seeking help, and he continued to seek help.

23 Dr. Jansen will tell you about all of his  
24 assessment of the patient. Importantly, he talked about  
25 the patient had suicidal thoughts and thoughts of



1       hurting others, but no specific plan. He had these  
2       general thoughts that caused concern enough for Dr.  
3       Jansen, at the end of his evaluation, which took 20  
4       minutes or so, to decide, I need to get the psychiatric  
5       people at the Naval Hospital to assess him. That is the  
6       protocol that the Navy sets forth. If you have a  
7       patient who comes in with suicidal ideations, you get  
8       the psychiatric people involved.

9               You'll see in Dr. Jansen's notes what he found; and  
10       again, importantly, what he didn't find, as he's  
11       assessing the patient. He has depression. He doesn't  
12       have a plan. He's a little bit disoriented to where he  
13       is, but he doesn't have fearful hostility. He doesn't  
14       have other things that would make you think that he's  
15       got a psychosis or schizophrenia, or that he's under the  
16       influence of alcohol or drugs, and he hasn't had a  
17       suicide attempt. The doctor noted, in his conversation,  
18       in the past, this gentleman had discussed suicide  
19       gestures, but he has no plan.

20              Mr. Hunt, at the conclusion of Dr. Jansen's  
21       evaluation, was told that the psychiatric tech would be  
22       coming down to see him. Mr. Hunt stayed in the E.R.  
23       He's still there voluntarily, because he has done  
24       nothing to suggest a plan that suggests anything else  
25       needs to be done.

1           You'll hear Mr. McDonald talk about his  
2       observations of this gentleman in the E.R.; that he was  
3       calm; that he was polite; that he talked when you spoke  
4       to him; and on one occasion, he got up and went to the  
5       restroom; asked if he could go; he was allowed.  
6       Restroom's right here, right next to where Mr. McDonald  
7       is. He can hear what's going on. Nothing unusual.

8           The gentleman walked out. Mr. McDonald said, would  
9       you like some water? The gentleman, Mr. Hunt, said, no,  
10      thank you. Went back to the room; sat in the same room  
11      where he and Mr. Ray were; and that, this whole time  
12      that this gentleman is in the E.R., every one of these  
13      people will say he was like a model patient. He was  
14      cooperative; he talked to us when we talked to him; he  
15      wasn't agitated; he wasn't upset; he sat there and did  
16      what we asked him to do; and he remained in the E.R.  
17      voluntarily, this whole time, with Mr. Ray.

18           You'll hear the testimony from all of these  
19      providers that this gentleman was calm; he was  
20      collected; he was cooperative; and at no point did  
21      anyone there think that he was a potential risk of harm  
22      to himself or anyone else in that E.R., with any type of  
23      an active plan.

24           They have to respect -- and you're going to hear  
25      Dr. Jansen and the others talk about patient rights and

1 the fact that they're in the process of getting a  
2 physical -- I mean, a psychiatric evaluation. Mr.  
3 Manning, the psyche tech, comes down; spends half an  
4 hour with Mr. Hunt. He's the last medical provider  
5 that's talking to the gentleman for any length of time.

6 When Mr. Manning exits the E.R., he knows the  
7 situation that's going on; he sees Joe McDonald there;  
8 he sees Mr. Hunt there. Mr. Manning tells them, I'm  
9 going to go up and talk to the psychiatrist, but that's  
10 all he says. The psychiatric tech, with the specialty  
11 knowledge he has, doesn't say, you better watch this  
12 guy; you better do something to restrain him; you better  
13 do anything other than what was going on. All he says  
14 is, he's got some issues; I'm going to go upstairs and  
15 talk to Hendelman; we'll get back to you. Or words to  
16 that effect.

17 Dr. Hendelman, you will hear testimony from by  
18 video, I think. She's going to tell you that this guy,  
19 when she was told the information that the psychiatric  
20 tech told her, Mr. Manning, that he was an obvious  
21 person to be admitted. Dr. Jansen will tell you that he  
22 spoke to Dr. Hendelman afterwards and said, hey, you  
23 know, what do you think; I'd like for you to come down  
24 and see the guy. Hendelman tells him, no, you don't  
25 need to; it's not going to change my opinion; he needs

1 to be admitted. Dr. Jansen says, okay; we'll admit him.

2 The problem at the Naval Hospital at the time is,  
3 admission to the Naval Hospital psychiatric facility  
4 won't work, because they don't have one. They don't  
5 have the ability to take care of these patients on the  
6 weekends, so he has to go to Beaufort Memorial Hospital.

7 Dr. Jansen will tell you, he already suspected this  
8 gentleman might be going to the hospital for further  
9 evaluation, and that he had taken some steps to check on  
10 beds when Dr. Hendelman told him he needs to be  
11 admitted. Since the psychiatric persons are on board  
12 with that, he then goes down to start a process. The  
13 problem is that, when he came down, the patient had gone  
14 outside with Mr. Ray.

15 Now, you'll hear Joe McDonald tell you about the  
16 circumstances surrounding Mr. Ray and Mr. Hunt leaving  
17 the facility. He's going to tell you -- and he wrote a  
18 note, you'll see it in all the records you get -- that,  
19 when the patient had come out of the bathroom, he went  
20 back and sat with Mr. Ray in Bay Number 4; and that, for  
21 some period of time after that, Mr. Ray and the patient  
22 walked up; and Mr. Ray said words to the effect, hey,  
23 we're going to go out and get some air; can we go get  
24 some air.

25 And Mr. McDonald, knowing that everything had been

1 cooperative; this patient hadn't shown any signs of  
2 agitation; hadn't shown any signs he wasn't going to do  
3 what people ask him to do; had hung out with Mr. Ray the  
4 whole time, all day, at this point, two hours; hadn't  
5 shown any suggestion that he was anything other than a  
6 calm man who was getting help and seeking help, and  
7 going through the process, said, sure, go ahead,  
8 expecting that they would go out; have a smoke. This  
9 gentleman was a smoker. Get fresh air, whatever they  
10 were going to do, and come back to continue the  
11 evaluation that Mr. Hunt had voluntarily started on his  
12 own, that had been going on for a couple of hours now;  
13 and that, at no point did Mr. Hunt give any intimation  
14 that he was going to do anything other than continue to  
15 cooperate.

16 So, as you go through the next couple, three days  
17 of trial, ladies and gentlemen, think about these four  
18 issues. As you listen to the testimony, think about  
19 foreseeability. Is it professional medical judgment  
20 that's required here. The medical doctors and nurses  
21 have to use professional judgment to decide if these  
22 signs or symptoms mean we need to do something  
23 different; or is it the ordinary care. The Plaintiff's  
24 got the burden of proof on all of these.

25 Do the signs and symptoms that were present,

1       versus, and the ones that weren't present, suggest that  
2       this gentleman was going to be a flight risk, much less  
3       go steal a fire truck that's a hundred yards, 200 yards  
4       away.

5           I think you saw, in the Plaintiff's photograph, the  
6       Naval Hospital. The E.R. back over here. They would  
7       have had to exit this way, go in this direction on  
8       Pinckney Boulevard. The clothes that were found when,  
9       for whatever reason, this gentleman began to disrobe,  
10      are over here. And then, he ran down the road to the  
11      apartment complex back here. The question is, is any of  
12      that foreseeable in a guy who has been calm, collected,  
13      cooperative in an E.R.? The evidence will show, we  
14      think not.

15           Seven healthcare providers saw this gentleman  
16      before he eloped. Mr. Edward Ray, a V.A. worker with  
17      many years experience, was with him the whole time.

18           We have a patient that followed all of the rules  
19      asked of him.

20           You're going to hear, potentially, from some  
21      experts. You'll hear from an expert for the Plaintiffs,  
22      a Dr. Terrence Baker. I'm going to cross-examine him.  
23      I ask you to listen very carefully to his  
24      qualifications, his experience, sort of where he makes  
25      most of his money, whether it's in the courtroom or

1 actually in teaching or treating patients.

2 But also, I ask that you look at the assumptions  
3 that he makes and the opinions that he brings and tries  
4 to give you in that courtroom, that witness stand, and  
5 how valid they are. And look at some of the things he's  
6 written before he walked in here, and compare them to  
7 what he says on this courtroom -- or in this courtroom.  
8 I'll bring this to your attention on cross-examination.

9 We may be bringing to you a Dr. Oberg, who's an  
10 E.R. doctor up in Charleston. He will come in and  
11 explain to you what doctors and healthcare providers do  
12 when they look at these signs and symptoms, and whether  
13 or not what this patient was presenting with makes any  
14 of that occur; whether how he presented that day would  
15 make things foreseeable in this situation. And we hope  
16 that he'll help you understand some of the issues that  
17 are involved when you're dealing with a patient like  
18 this.

19 CasePro is a corporation, I think the Judge told  
20 you at the very beginning that corporations get treated  
21 the same as people. Well, that sounds great, but  
22 doesn't really tell you anything. Let me tell you a  
23 little bit about CasePro. Mike McCabe is here. CasePro  
24 was founded by his mother some years back. It is a  
25 company that does do contracts with the military. They

1 have, for years, been run by Mike, as his mother moved  
2 toward retirement. They do contract with the Navy and  
3 other departments of the government in staffing E.R.  
4 facilities just like this. They've been doing it for a  
5 few years, and they continue to do it.

6 In this particular situation at the Naval Hospital,  
7 there were two companies that staffed this E.R. before  
8 CasePro took the contract. So, this was not the first  
9 time the military had dealt with a company like CasePro.

10 He will tell you their relationship with the Dr.  
11 Jansen and the McDonalds is that they do hire them; they  
12 pay them; they provide their paychecks; they work with  
13 scheduling. But all of the control over what goes on in  
14 that E.R., all of the policies, all of the procedures,  
15 everything the E.R. doctors and nurses can do is  
16 dictated by the Navy. It's dictated by the government.

17 So, any of the protocols that are in place,  
18 anything that's done, CasePro's not allowed to say what  
19 the doctor and what the nurses can do. They don't have  
20 control over the day-to-day activities. They also do  
21 not provide the employees privileges to work in the  
22 hospital. The Navy does that. So, they have the call  
23 on whether the privileges are granted, or not.

24 At the beginning of the trial, the Judge told you  
25 there are two parts to the case. The Plaintiff goes



1 first. We go last. I always have to ask people, please  
2 do not make up your mind about the case, the issues in  
3 this case, until you've heard all of the evidence,  
4 because the Plaintiff will put up their witnesses first.  
5 I will not put my witnesses up 'til last. They may call  
6 the McDonalds during the Plaintiff's case in chief, and  
7 I may get to ask them some questions, but we'll still  
8 have other witnesses at the end. So, I ask that you  
9 promise if you can wait 'til the end to make up your  
10 mind.

11 I want you to remember what the Judge said about  
12 burden of proof as you listen to the case. The burden  
13 of proof is on the Plaintiff, Ms. Delaney, in proving  
14 all of her claims against my client. We raised some  
15 defenses, but those defenses don't have to be considered  
16 at all until the Plaintiff has met her burden of proof.  
17 And we contend, when you finish reviewing the evidence  
18 in this case, ladies and gentlemen, on the four things  
19 that we talked about here, you're going to find that the  
20 Plaintiff has not met their burden of proof.

21 The last thing I want to leave you with is one  
22 instruction I think you will get at the end of the  
23 trial, and it relates to sympathy. Sympathy is  
24 something we all have in situations like this, where a  
25 tragedy has occurred and a young man has lost his life.

1 But what the Judge will tell you is that, as you listen  
2 to this case and you decide the issues, sympathy really  
3 cannot play a factor in your deliberations and your  
4 discussions.

5 It's easy to let sympathy affect your ability to  
6 think about things, and sometimes the Plaintiffs in  
7 these cases like to throw sympathy out there to make you  
8 feel real sympathetic and not think about what the real  
9 issues are. And we just ask that you set sympathy  
10 aside; decide this case on the facts as you hear them  
11 today in a jury room, and the rest of the week here in  
12 the witness box as you deliberate; and that you decide  
13 this case based on the facts that you see, without  
14 allowing sympathy to sway you.

15 I want to thank you for your time, and ask that, at  
16 the end of our case, you listen to us when we do our  
17 closing, as well. Thank you.

18 BY THE COURT:

19 THE COURT: Thank you so much. All right.  
20 Counsel, please approach.

21 OFF-THE-RECORD BENCH CONFERENCE, OUT  
22 OF HEARING OF JURORS. PRESENT:  
23 THE COURT, MR. HOYLE, MS. CASTLEBERRY,  
24 MR. LOVELL, MR. MACKELCAN.  
25 END BENCH CONFERENCE.

1 BY THE COURT:

2 THE COURT: Ladies and gentlemen, this is a good  
3 time for us to take our break and let you have your  
4 lunch. It's now 12:30. I'm going to ask you when you  
5 return and we're ready, we'll continue with this matter  
6 at a quarter till two. That gives you about an hour and  
7 15 minutes.

8 Remember, during the lunch break, do not discuss  
9 this matter or allow anybody else to discuss it with  
10 you. Do not do any investigation. Leave your cells  
11 phones or other communication devices away from the  
12 courthouse. Do not listen to anything. Do not read  
13 anything about this matter on radio, television,  
14 newspaper, Internet. And if you forget and bring your  
15 cell phone or other communication device back with you,  
16 please let us know, and we will take care of it until  
17 our afternoon break.

18 Ladies and gentlemen, leave your notebooks in your  
19 seat. We will guard them over lunch. And I look  
20 forward to seeing you at 1:45. Thank you. Now, go with  
21 your bailiff.

22 JURORS LEAVE COURTROOM 12:35 P.M.

23 BAILIFF: Jury is clear, your Honor.

24 OBJECTIONS AND RULINGS:  
25

1 THE COURT: Thank you so much. All right, Counsel,  
2 911, there's an objection to the admissibility of the  
3 911 tape, on the basis of?

4 MR. MACKELCAN: Relevance.

5 THE COURT: Got it.

6 MR. MACKELCAN: And it's a recording that has some  
7 panic to it. And so, I think it's intended to create  
8 some emotion in the jury, when it doesn't have a whole  
9 lot of probative value to the case.

10 THE COURT: Okay. All right. Well, let me hear  
11 it. And then, on the other side of hearing it -- or I  
12 could ask -- I guess, I'll be listening for it -- what  
13 issue, which is of consequence to this matter, does this  
14 make more probable or less probable?

15 MR. HOYLE: Good afternoon, your Honor. The 911  
16 recording details virtually the moment Calvin Hunt  
17 leaves the Naval Hospital, until our client has been hit  
18 by the fire truck. There are a series of calls that are  
19 made. First, from a masters of arms at the guard shack,  
20 saying someone in his underwear ran past.

21 Then, to the manger of the Laurel Hill Apartment  
22 complex that says there's a naked man running through  
23 the neighborhood. That same woman then observes the  
24 naked man get in the fire truck.

25 It essentially -- I hate to use the word, play-by-

1 play, but there's essentially a sequential explanation  
2 of everything that happened. It was reported in real  
3 time by citizens of this community who called 911, and  
4 who their present sense impressions were recorded. Some  
5 of them, as Mr. Mackelcan said, were excited utterance.  
6 They were shocked that there was this fire truck driving  
7 50-plus miles an hour down Ribaut Road, causing the  
8 carnage that its -- that is happening.

9 But it goes to what we talked about yesterday,  
10 proximate cause. It goes to showing the time frame,  
11 from the time Calvin Hunt left, until Justin Miller is  
12 no longer with us. It is important for our case. And I  
13 think it's more efficient for our case than calling all  
14 of these people who called the 911 and said, oh, I saw a  
15 fire truck go by and hit this car at Hardees, hit this  
16 car at the gas station, hit this car, wherever. We can  
17 play it in a sequential sequence as it was recorded.

18 We have here, sitting out in the lobby of the  
19 courthouse, the records custodian for the sheriff's  
20 office. She can authenticate it. And I believe we can  
21 get it in as a business record.

22 But with respect to -- I didn't hear a 403  
23 argument, but I'll go ahead and address that. There's  
24 case law in this state, *State v Shuler*, recorded at 353  
25 South Carolina 176, a 2003 case, in which the court held

1       that the 911 tape at issue was not so unfairly  
2       prejudicial as to substantially outweigh its probative  
3       value. I hit myself that time, Judge.

4           THE COURT: I know. It's great.

5           MR. HOYLE: And so, I think that it does tend to  
6       make facts at issue in this litigation more probable  
7       than not. It's clearly relevant. Any danger of  
8       prejudice is not substantially -- does not substantially  
9       outweigh that. And I'll also state, as an officer of  
10      the Court, we're not offering it as a way to elicit  
11      sympathy or shock or anything of that. We are merely  
12      offering this into evidence to try and meet our burden.  
13      We certainly have that burden. We've got to show a  
14      causal connection between a fire truck a couple miles  
15      away from the Naval Hospital striking a pedestrian, and  
16      what happened within the four walls of the Naval  
17      Hospital.

18           This gives us that temporal context for these  
19      twelve jurors to make that decision.

20           THE COURT: All right. Let me hear the 911 tape.

21           MR. HOYLE: Mr. Knowles? He's going to play the  
22      tape. I'll warn you, it's 28 minutes, your Honor.

23           THE COURT: Okay.

24           MR. HOYLE: Your Honor, may we pause the tape so  
25      Ms. Delaney can leave?

1 THE COURT: Yes.

2 MR. HOYLE: And your Honor, while we deal with  
3 that, I also want to mention that, while we will seek to  
4 introduce the 911 call and publish it, the sheriff's  
5 office also recorded the radio transmissions from their  
6 dispatch center to the various officers and other  
7 responders. We do want to lay a foundation and move  
8 that into evidence, but not publish, but we do think it  
9 should be a part of the record, as portions of this may  
10 become relevant later in this trial.

11 THE COURT: Okay.

12 MR. HOYLE: But not all of them, because it's some  
13 two hours and 18 minutes of various recordings. At  
14 times, they're talking to different people at the same  
15 time. Does that make sense?

16 THE COURT: Yes.

17 MR. HOYLE: So, I essentially want to present the  
18 911 calls.

19 C.D. OF REDACTED AUDIO RECORDING

20 OF 911 CALLS PLAYING.

21 PAUSE PLAYING C.D. OF REDACTED AUDIO

22 RECORDING OF 911 CALLS.

23 MR. HOYLE: Your Honor, that is the entirety of --

24 RESUME PLAYING C.D. OF REDACTED

25 AUDIO RECORDING OF 911 CALLS.

1                   END PLAYING OF C.D. OF REDACTED

2                   AUDIO RECORDING OF 911 CALLS.

3           MR. KNOWLES: Yeah, I think that's it. Yeah.

4           MR. HOYLE: I'll stand up again. Your Honor, that  
5 is the entirety of the 911 calls that were produced by  
6 the Beaufort County Sheriff's Office.

7           In addition to our prior argument, I just want to  
8 point out that I heard in opening Mr. Lovell talk about  
9 how Calvin was calm, cool, collected. He talked about  
10 foreseeability. I believe that what we just heard on  
11 this 911 call is directly relevant to the mental state  
12 of Calvin Hunt. Was this someone who was calm, cool,  
13 collected, behaving himself, doing what he was supposed  
14 to do; or was this someone who was a paranoid  
15 schizophrenic off his medication, out of control?

16           We believe that this audio recording, which, again,  
17 we can authenticate, goes directly to several of the  
18 issues in this case. Thank you, your Honor.

19           THE COURT: Okay. Yes.

20           MR. MACKELCAN: Very briefly. The only thing I'd  
21 have to add is, it seems a little bit cumulative that  
22 there -- there was one incident at --

23           THE COURT: Let me tell you that I agree with that  
24 completely, on the cumulative. I agree on the  
25 cumulative nature of it where there are many calls that



1 are the same, appear to be at the impact of the corner  
2 of Ribaut and the bridge. I agree completely with that.

3 Let me ask this question. How is the recording  
4 time stamped, because it isn't done on the tape itself.  
5 So, you argued that it was admissible because it is the  
6 best evidence of temporal context, correct? Tell me how  
7 so.

8 MR. HOYLE: I would -- the tape itself may not be  
9 quantitatively helpful, as far as what you're talking  
10 about. I think it's qualitatively helpful, in that,  
11 it's giving you the logical sequence of events. The  
12 gate, the apartment complex, which way -- which route  
13 the vehicle is traveling, where he is at a specific  
14 time.

15 THE COURT: Mr. Hoyle, are you certain of that?  
16 Are you certain that the 911 operator does not have the  
17 ability to tell you exactly when those calls came?

18 MR. HOYLE: I honestly do not know that  
19 information. I think that will be appropriate questions  
20 for the 911 record custodian. I don't want to make a  
21 misrepresentation to the Court. That's why I'm,  
22 unfortunately, not answering your question.

23 THE COURT: I got you. So, I need to know that.  
24 Here's what I would not allow to come in. I would not  
25 allow the duplication with that accident at this portion

1 of the case. I think it's -- if there is a punitive  
2 portions of the case, I do think that the number of the  
3 people in the public who are affected does become  
4 relevant on the issue of punitive damages, if we reach  
5 that point.

6 MR. HOYLE: Yes, your Honor.

7 THE COURT: So, but insofar as the relevance with  
8 regards to the liability portion, I do not believe that  
9 the number of phone calls -- that they are duplicative.

10 I do think, though, that it's important that the  
11 testimony is some cars. Some said five cars, somebody  
12 said two cars, somebody said couple of cars, that you're  
13 allowed to, if you wish, to go into the five cars, for  
14 example, or whatever is the accurate number.

15 MR. HOYLE: Um-hmm.

16 THE COURT: I do think that the relevance is  
17 important, if it's temporally stamped in some form or  
18 fashion. I presume it is, but you'll let me know that.  
19 Just from having dealt with 911 tapes a lot, they  
20 typically are. So, you'll need to let me know that  
21 affirmatively.

22 And there are a couple of phone calls, but they may  
23 be included -- I think that they are included, at that  
24 accident site at Ribaut and the bridge, where someone is  
25 calling in there's an accident, and they say we know

1 about it. And so, there's not enough information given  
2 to tie that back to the fire truck. But I think that  
3 you'll find that, that's just part of a number of phone  
4 calls about the wrecks that occurred at Ribaut and the  
5 bridge at the CVS and the Hardee's. So, those will need  
6 to be redacted.

7 MR. HOYLE: If I could confer with my co-counsel?

8 THE COURT: Yes.

9 MR. HOYLE: We can certainly make those redactions,  
10 your Honor.

11 THE COURT: Okay. And before I make a final  
12 conclusion, I really, really do want to have that  
13 information about whether or not the 911 custodian can  
14 identify times. How are they time stamped? Okay?

15 MR. HOYLE: Thank you, your Honor.

16 THE COURT: All right. So, I think that deals with  
17 the 911 tape.

18 MR. HOYLE: May I ask that my colleague, Ms. Leavy,  
19 be excused to go meet with the records custodian?

20 THE COURT: Sure. Absolutely.

21 MR. HOYLE: To obtain some of that information.

22 THE COURT: And then, you all work on that, and  
23 then, we'll just reconvene.

24 MR. HOYLE: Your Honor, I know that it is the lunch  
25 hour, and I certainly don't want to keep anyone from

1 lunch, most importantly, your Honor and the courthouse  
2 personnel. I know that, sequentially, today, they're  
3 going to be some other issues that we need to take up.

4 THE COURT: Right.

5 MR. HOYLE: I'm going to raise one.

6 THE COURT: Okay.

7 MR. HOYLE: Okay. My co-counsel has raised that we  
8 have a trooper from the Highway Patrol who is sitting  
9 out in the lobby, and there are some photographs that he  
10 took that we will seek to enter into evidence, and have  
11 him walk through, with the jury, about his investigation  
12 scene. I understand that there are some objections  
13 about that.

14 Also, I wanted to raise this while my client is  
15 physically out of the room. We will -- I will, later  
16 this afternoon, be attempting to introduce into evidence  
17 -- I think I've narrowed it down to four or five autopsy  
18 photographs. I believe that they do go to two issues in  
19 this case. Four of these photographs directly go to  
20 Plaintiff's survival cause of action. And then, the  
21 other one goes to corroborate that the injuries were  
22 sustained as a result of a crush injury, as a result of  
23 being run over by a vehicle. That's going to be the  
24 testimony with respect to the last photograph.

25 I understand there's a blanket objection to any

1 autopsy photos coming in from the Defendant. I just  
2 wanted to put that out there in case your Honor wanted  
3 case law, wanted to see the photographs, anything like  
4 that, so that we could work around your scheduling and  
5 not further inconvenience you later today with these  
6 issues.

7 THE COURT: Thank you. I appreciate that very  
8 much. So, with regards to the -- first of all, the  
9 photographs, are there objections? I'm looking at  
10 everyone. Are there objections to all of the  
11 photographs?

12 MR. MACKELCAN: No. Your Honor, I think the  
13 objections to the Highway Patrol photographs are the  
14 same objections to the autopsy photographs. So, what we  
15 are objecting to is not pictures of the fire truck or  
16 pictures of the fire truck crashed into trees, but we  
17 are objecting to pictures of Mr. Miller's dead body.

18 THE COURT: Okay. And as I understand it, that it  
19 is the position of the defense that, that is not an  
20 issue.

21 MR. MACKELCAN: Whether or not he died? That is  
22 not an issue.

23 THE COURT: Or whether or not he died as a result  
24 of being struck by the fire truck.

25 MR. MACKELCAN: That is not an issue.

1 THE COURT: Okay. And so, now, I'm going to turn  
2 and ask, I gather, then, that the Plaintiffs maintain  
3 that the issue has to do with survival, as opposed to --

4 MR. HOYLE NODDED HEAD.

5 THE COURT: Okay. So, talk to me about the  
6 evidence that the photographs would corroborate on the  
7 issue of survival.

8 MR. HOYLE: Your Honor, I don't know. I'll need a  
9 moment on the Highway Patrol photographs.

10 THE COURT: Okay.

11 MR. HOYLE: I can talk to you about the autopsy  
12 photographs.

13 THE COURT: Okay.

14 MR. HOYLE: These are pre-dissection photographs  
15 taken in the autopsy suite of MUSC before any work by  
16 the pathologist was done.

17 THE COURT: Okay.

18 MR. HOYLE: And there's a case -- Ms. Leyimu has  
19 run away. I think I sent her away. But nevertheless, I  
20 can't think of the case off of the top of my head, but  
21 there is case law that came out last year in which our  
22 Supreme Court spoke about the admissibility of autopsy  
23 photos. And the Court clearly said, gruesomeness, in  
24 and of itself, is not a reason to keep it out.

25 THE COURT: That's right.

1 MR. HOYLE: These particular photographs -- may I  
2 approach?

3 THE COURT: Sure. And you're going to --

4 MR. HOYLE: I really don't want -- I'm the most  
5 uncomfortable person with these things. So, these two  
6 photographs --

7 THE COURT: Now, you're showing me photographs that  
8 have been marked as Plaintiff's Exhibits 5, 6, 7, 8, and  
9 9. Okay. And they would be for identification purposes  
10 at this point, because there's an objection to them.  
11 So, they're not in evidence.

12 ITEM IDENTIFIED AS AUTOPSY

13 PHOTOGRAPH

14 MARKED PLAINTIFF'S EXHIBIT NUMBER 5

15 FOR IDENTIFICATION.

16 ITEM IDENTIFIED AS PHOTOGRAPH

17 MARKED PLAINTIFF'S EXHIBIT NUMBER 6

18 FOR IDENTIFICATION.

19 ITEM IDENTIFIED AS AUTOPSY

20 PHOTOGRAPH

21 MARKED PLAINTIFF'S EXHIBIT NUMBER 7

22 FOR IDENTIFICATION.

23 ITEM IDENTIFIED AS PHOTOGRAPH

24 MARKED PLAINTIFF'S EXHIBIT NUMBER 8

25 FOR IDENTIFICATION.

1           ITEM IDENTIFIED AS PHOTOGRAPH  
2           MARKED PLAINTIFF'S EXHIBIT NUMBER 9  
3           FOR IDENTIFICATION.

4           THE COURT: Now, that testimony would be elicited  
5           from, I gather, medical examiner or pathologist.

6           MR. HOYLE: Dr. Michael Caplan. He is the board-  
7           certified, forensics pathologist who conducted this  
8           autopsy at MUSC, and is actually outside. He will offer  
9           testimony concerning 5 and 6, which are a view of the  
10          right side of the decedent's body.

11          I don't want to give it all away, but my  
12          understanding, from meeting with Dr. Caplan, is that  
13          there is evidence in these photographs of hemorrhaging  
14          that's externalized to the body that shows the blood was  
15          circulating at a particular time past a certain injury  
16          taking place to the body. So, it's connecting the dots  
17          between was blood still flowing when X event to the body  
18          happened. And the reason these four photographs are  
19          relevant, because it's showing something that you can  
20          see on one view of the body, as opposed to the other  
21          view of the body.

22          THE COURT: Okay.

23          MR. HOYLE: And with respect to the photograph  
24          that's marked Exhibit Number 9, --

25          THE COURT: 9, yes.



1 MR. HOYLE: -- this is a view of the decedent's  
2 abdominal cavity. A number of organs were avulsed from  
3 the body. That means that they were ripped from the  
4 body.

5 THE COURT: Yes.

6 MR. HOYLE: And Dr. Caplan will testify as to the  
7 nature of these injuries being consistent with crush  
8 injuries from a vehicle striking the body and dragging  
9 him for some period of time.

10 There will be discussion -- I don't know if this  
11 photograph is the most illustrative, but there will be  
12 some discussion about whether or not blood was still  
13 circulating and whether or not there was consciousness  
14 when some of these avulsion injuries took place.

15 THE COURT: Okay. 9 is out.

16 MR. HOYLE: Okay.

17 THE COURT: And, now, talk to me about 7 and 8.

18 MR. HOYLE: 7 and 8 are merely comparison. It's  
19 look at one side, look at the other. These are the two  
20 photographs that Dr. Caplan will be able to use to  
21 illustrate to us that blood was still flowing at a  
22 particular time. He will use these merely to contrast  
23 what is shown in 5 and 6.

24 THE COURT: All right. Now, as you know, the issue  
25 is conscious pain and suffering, and what, if any,

1 evidence would you offer, with regards to conscious pain  
2 and suffering?

3 MR. HOYLE: We will offer evidence as to conscious  
4 pain and suffering; that there was a period of  
5 consciousness.

6 THE COURT: There was a period of consciousness and  
7 --

8 MR. HOYLE: To a reasonable degree of medical  
9 certainty.

10 THE COURT: And photographs 5 and 6.

11 MR. HOYLE: Go to corroborate that as a result of  
12 showing the blood was circulating when certain injuries  
13 occurred.

14 THE COURT: Okay. All right.

15 MR. HOYLE: And your Honor, just for the record,  
16 there are about 150 photographs.

17 THE COURT: Sure.

18 MR. HOYLE: I've done my best to narrow this down.  
19 I also have gone back and forth in my own mind, if your  
20 Honor were to rule these inadmissible, my intention, at  
21 this point in time, I don't believe, would be to publish  
22 these to the jury. But I do think they should go back  
23 to the jury room, to further corroborate Dr. Caplan's  
24 sworn testimony.

25 THE COURT: All right. Well, here's what I would

1 do with regards to these photographs. There's no  
2 difference between 5 and 6 that I can ascertain, and  
3 that's why I asked you that. Is that correct? There's  
4 no difference between 5 and 6?

5 MR. HOYLE: Maybe -- I will merely tell you these  
6 are the photographs that Dr. Caplan selected. So, I'm  
7 not going to say under oath that there's no difference.

8 THE COURT: So, you need to find that out.

9 MR. HOYLE: Okay.

10 THE COURT: And whether or not. And then, is there  
11 any difference between 7 and 8, because it seems to me  
12 that they are just duplicates of each; that they're the  
13 same photo, effectively. And so, and I would need to  
14 hear his testimony before I would ascertain whether or  
15 not these photographs are corroborative, and that's  
16 Plaintiff's Number 5 and Plaintiff's Number 7. If they  
17 show something different and they're not duplicative,  
18 then, you would need to let me know that.

19 But I want to know the testimony that he would --  
20 you would elicit that these photographs would be  
21 corroborative of. Okay. Is that clear? Are you all  
22 clear with that? You all clear with that?

23 MR. LOVELL: Yes, your Honor.

24 MR. HOYLE: I'm absolutely clear on that, your  
25 Honor.

1 THE COURT: And I think my -- an answer with regard  
2 to the temporal part of the tape. And I think I'm  
3 supposed to make a finding of fact with regards to  
4 Number 9. Exhibit Number 9, even I am absolutely -- I  
5 don't know, unless you can tell me -- what you're  
6 telling me is that this was a crush injury; and then,  
7 this young man's body was ripped apart; and that's what  
8 the photograph shows. And I do not believe that, that  
9 photograph is corroborative of any issue in this case,  
10 particularly when it isn't contested that he was hit by  
11 a fire truck and killed by a fire truck. The issue of  
12 survival certainly is, and the duration of the survival  
13 is an issue. But Number 12 --

14 MR. HOYLE: 9.

15 THE COURT: Number 9, Number 9 doesn't seem to  
16 corroborate what you've told me, as opposed to the other  
17 two photographs. But I can assure you that, given the  
18 nature of that particular photograph, any probative  
19 value of Number 9 is far exceeded by the prejudicial  
20 effect. Okay?

21 MR. HOYLE: I respect your ruling. Thank you, your  
22 Honor.

23 THE COURT: All right.

24 OFF THE RECORD 1:17 P.M.

25 BACK ON THE RECORD 2:05 P.M.

1 CONTINUE OBJECTIONS:

2 BAILIFF: All rise. Court is now back in session.

3 THE COURT: All right. Please be seated. All  
4 right. You say you're ready for the Highway Patrol  
5 person and photos. Need to decide between the photos  
6 and the Highway Patrol. Are you all offering  
7 photographs with the Highway Patrol?

8 MR. HOYLE: I believe we've reached an agreement on  
9 the photos.

10 THE COURT: Let me know what that is, please.

11 MS. CASTLEBERRY: Your Honor, we just reached an  
12 agreement, and we took any photograph that depicted the  
13 body under the fire truck.

14 THE COURT: Very well. Is that correct?

15 MR. MACKELCAN: It is, your Honor.

16 THE COURT: And any of the photographs that  
17 remained were not objectionable?

18 MR. MACKELCAN: It's just at the accident scene and  
19 the fire truck.

20 THE COURT: Very well. Can we go ahead and mark  
21 those and move them into evidence.

22 MS. CASTLEBERRY: I've marked those, your Honor,  
23 but I'd move to have them admitted into evidence.

24 THE COURT: Wonderful. Could we make a record of  
25 that, please.

1 MS. CASTLEBERRY: Your Honor, we've marked this as  
2 an exhibit -- Plaintiff's Exhibit -- we have it marked  
3 as Exhibit 3.

4 THE COURT: Okay. That's just one photograph  
5 that's going to be offered?

6 MR. HOYLE: It's collective.

7 MS. CASTLEBERRY: It's collective. It's a  
8 collective exhibit, your Honor.

9 THE COURT: All right. So, it would be Plaintiff's  
10 Exhibit 3. And we need to go ahead and mark them as A,  
11 B, C, and D.

12 MS. CASTLEBERRY: Okay. Okay.

13 THE COURT: I don't want them to -- if they get  
14 separated, if you don't mind doing that. And somebody  
15 can take a look, just to --

16 MR. HOYLE: Your Honor, while they do that, I do  
17 have a brief update on the record custodian from the  
18 sheriff's office.

19 THE COURT: Okay.

20 MR. HOYLE: She will be coming here -- I don't know  
21 the technical term. I've heard that they are called CAD  
22 sheets. And she should be able to give us a time frame  
23 for the -- a time for a call. But what she did tell us  
24 on the telephone a few minutes ago is that, the way that  
25 disc that you heard here in open court was prepared is,

1 they are in sequential order with which they were  
2 received at the call center.

3 I've asked Mr. Knowles to make the redactions that  
4 your Honor requested, as far as cumulative recordings,  
5 and we are going to render that to a C.D. And to the  
6 extent your Honor finds --

7 THE COURT: I can just feel there's information in  
8 there that is critical on this issue.

9 MR. HOYLE: -- finds that, that 911 call should be  
10 admissible in court, we would respectfully move the  
11 redacted version into evidence, as opposed to the  
12 original.

13 THE COURT: Okay.

14 MR. HOYLE: A lot of moving pieces, Judge.

15 THE COURT: That's okay. Got it.

16 MS. CASTLEBERRY: Your Honor, we're ready to seek  
17 admission of Plaintiff Exhibit Numbers 3, and it would  
18 be A through Z, and we want to move to have that  
19 admitted at this time.

20 THE COURT: And those are the photographs

21 MR. MACKELCAN: No objection.

22 THE COURT: No objection. Very well.

23 ITEMS IDENTIFIED AS PHOTOGRAPHS

24 MARKED PLAINTIFF EXHIBIT NUMBERS

25 3-A THROUGH 3-Z, ADMITTED AS EVIDENCE.

1 MS. CASTLEBERRY: And we will be using the monitor  
2 as the mirror image of these for him to illustrate this.

3 THE COURT: Okay. Very well.

4 MS. CASTLEBERRY: Thank you.

5 MR. LOVELL: Your Honor, while he's using that, may  
6 I walk around to that side to see it?

7 THE COURT: Oh, absolutely. Please.

8 MR. LOVELL: Thank you.

9 THE COURT: And you need not even ask, Counsel. If  
10 any of you need to move around, be sure you're able to  
11 see, please. Okay. Not a problem.

12 MR. LOVELL: Thank you.

13 THE COURT: Jury? Bring the jury? Yes?

14 MR. HOYLE: Yes, Judge.

15 THE COURT: All right? Yes?

16 BAILIFF: Are you ready, your Honor?

17 THE COURT: Yes.

18 BAILIFF: The jury is entering the courtroom, your  
19 Honor.

20 JURORS ENTER COURTROOM 2:15 P.M.

21 BAILIFF: The jury is seated, your Honor.

22 THE COURT: Thank you. Thank you. All right.  
23 Ladies and gentlemen, I hope you had a very pleasant  
24 lunch. At this time, we will continue the Plaintiff's  
25 case. Please call your next witness. Yes.



1 MS. CASTLEBERRY: Your Honor, Plaintiff calls first  
2 witness, Corporal J.L. Perry.

3 THE COURT: Thank you.

4 BAILIFF: Go forward to be sworn, please, sir.

5 MADAM CLERK: Corporal Perry, right here, please,  
6 sir. Place your left hand on the *Bible*, and raise your  
7 right.

8 Do you solemnly swear or affirm that the testimony  
9 you're about to give in this matter is the truth, the  
10 whole truth, and nothing but the truth, so help you God?

11 CORPORAL JAMIE PERRY: Yes.

12 MADAM CLERK: Please be seated here, and state and  
13 spell your name for us.

14 CORPORAL JAMIE PERRY: My name's Jamie Perry. It's  
15 J/a/m/i/e, P/e/r/r/y.

16 THE COURT: Your witness.

17 CORPORAL JAMIE PERRY

18 DIRECT EXAMINATION, BY MS. CASTLEBERRY:

19 Q Good afternoon, Corporal Perry.

20 A How are you doing?

21 Q You've already stated your name. Can you tell us  
22 where you live.

23 A I live in Jasper County.

24 Q Okay. What's your occupation?

25 A I am a South Carolina Highway Patrolman.

1 Q Okay. And how long have you been a Highway  
2 Patrolman?

3 A Seventeen years.

4 Q And can you tell us a little bit of your training  
5 to become a Highway Patrol.

6 A Prior to becoming Highway Patrol, I was in the U.S.  
7 Navy. And then, after that, I came with the Highway  
8 Patrol in 1998, January of 1998. Job duties are  
9 basically traffic and law -- traffic and criminal law  
10 enforcement, along with accident investigation.

11 Q And just a little bit about your training for the  
12 Highway Patrol.

13 A Actually, I've been on 17 years. I've been to the  
14 school for -- for accident -- not reconstruction, but  
15 just accident investigation. Over the years, I've  
16 probably investigated over some, I'd say, 1,700  
17 collisions over the 17 -- 17 years.

18 Q Thank you so much. So, what is your rank?

19 A Corporal.

20 Q And where are you assigned?

21 A Jasper and Beaufort.

22 Q Okay. And tell us a little bit about your job  
23 duties.

24 A I'm a corporal, which is first line supervision,  
25 but also, I still do traffic, and I work collisions.

1 Q Let me turn your attention to February 24, 2012.  
2 Do you have a specific recollection of that date,  
3 Corporal?

4 A Yes, I do.

5 Q And how is it that you have a specific recollection  
6 of that date?

7 A I remember getting dispatched to an incident that  
8 day around 4:30. About 4:23 p.m., Dispatch called me  
9 via radio and stated that there was a stolen fire truck,  
10 and it was being pursued by Beaufort County Sheriff's  
11 Office.

12 Q Did you have an understanding of where it was? You  
13 said Beaufort County. Where, in Beaufort County?

14 A They did say Ribaut Road.

15 Q And so, what did you do?

16 A I was, at the time, at the Ridgeland Patrol Office.  
17 I was doing some paperwork. I immediately left the  
18 patrol office, and activated my lights and siren to try  
19 to get there as quickly as possible.

20 Q About how long did it take you to get from your  
21 Jasper office to Ribaut Road?

22 A I'd say, approximately, with the traffic, about 25  
23 minutes, even with blue lights and siren.

24 Q Okay. Did you find that there was any congested  
25 traffic as you made your way over there?

1 A Yes. Once I got into Beaufort, it, yeah, it got  
2 sort of congested.

3 Q And did you approach a particular area?

4 A Yes. I -- I came though -- came over, like, the  
5 Broad River Bridge, and turned on Savannah Highway,  
6 which, I think at the time, was 802. Now, it's, I  
7 think, 128. And went down Parris Island Gateway to  
8 Ribaut Road, and went that way, north.

9 Q Were you assigned to a particular task by the  
10 dispatch?

11 A I was just going, at the time, to try to assist,  
12 you know. That was before I actually knew there was a  
13 collision.

14 Q Okay. So, you were directed to -- you said there  
15 was a stolen fire truck. Were you directed to the area  
16 of the fire truck?

17 A Yes, ma'am.

18 Q And when you approached that scene, can you tell  
19 the jury what you saw.

20 A Like I say, I was driving north on Ribaut Road.  
21 When I got on-scene, I observed the fire truck to my  
22 left, on the south side of Ribaut Road that was -- it  
23 had struck several trees. Also, on the road, I noticed  
24 there was some -- some like skid marks from the tire,  
25 indicating that -- skid marks going from the northbound

1 lane of Ribaut Road, crossing the center line and the  
2 median, and going across the southbound, into the trees.

3 Q What else did you observe at the scene?

4 A As far as the fire truck, there was -- it had  
5 severe damage to the front and to the side. I also  
6 noticed that the -- the fire hose was knocked off, and  
7 there was other debris.

8 And also, at the right-rear of the fire truck,  
9 that's where I noticed a white male that was deceased,  
10 underneath the vehicle.

11 Q Were there any EMTs present at that time?

12 A Yes, there was.

13 Q What about the person who had been driving the fire  
14 truck? Do you know what his name was?

15 A At the time, I -- I didn't know. They told me he  
16 had already been transported, and I got that from a  
17 Beaufort City officer.

18 Q Did you come to find out later the name of the  
19 person who had been driving the fire truck?

20 A Yes, ma'am. Once I went to Beaufort Memorial to  
21 check on him, yes.

22 Q And who did you find out the person driving the  
23 truck was?

24 A It was Calvin Hunt.

25 Q So, let's go back to the scene. What are some of

1 the things that you did at the scene where the fire  
2 truck was located?

3 A The first thing, when I got there, I had somebody  
4 tell me that there was a witness, and I -- I spoke with  
5 him, which, his name is Christopher Miller. End up  
6 being the brother of the deceased. I spoke with him and  
7 asked him what had happened, and he informed me, you  
8 know, how the collision -- or, he informed what had  
9 happened.

10 Then, I started to take photos of the scene, of the  
11 fire truck and the marks in the roadway and the debris.

12 MS. CASTLEBERRY: Your Honor, may I approach the  
13 witness?

14 THE COURT: You may.

15 BY MS. CASTLEBERRY:

16 Q Corporal Perry, I'm going to show you what's been  
17 marked as Plaintiff's Exhibit 3, and it would be  
18 Plaintiff's A through C, and ask you if you recognize  
19 those photographs.

20 A Okay.

21 Q Do you recognize those photographs?

22 A Yes, ma'am.

23 Q Are those the photographs that you took that day  
24 at the scene?

25 A Yes, ma'am.

1 Q And are those a fair and accurate representation of  
2 what you saw?

3 A Yes, ma'am.

4 MS. CASTLEBERRY: Your Honor, may I ask that the  
5 witness step down from the witness stand to explain some  
6 of the photos, please?

7 THE COURT: Yes. And let me just share with you,  
8 when you step away from the microphone, you will no  
9 longer have the microphone.

10 A Yes, ma'am.

11 THE COURT: So, forget your inside voice; use your  
12 outside voice when you do that. And do you have  
13 pointers? Do you have pointers? Because I do. If you  
14 don't, I do. And the reason for that is, when you step  
15 down to point, inevitably, your body is going to block  
16 the monitor. So, you need to be able to stand by it so  
17 you can point.

18 A Yes, ma'am.

19 THE COURT: Like a stick. I get so excited when we  
20 use these. Hold on. Now. These used to be called  
21 laser printers -- or pointers. They're now called cat  
22 toys, so. If you will each take a cat toy, and --  
23 that's correct, cat toys. And just go ahead and see if  
24 it will show up on the monitor. Is it working? I can't  
25 tell if it's working. Yes, it's working. And the only

1 reason is that, now, here's what I need you to do,  
2 because Counsel and the witness are both going to be  
3 having a conversation. You all have to be able to see  
4 the monitor. So, I'm mindful and I don't want Corporal  
5 Perry to block. So, if you all can't see, raise your  
6 hand.

7 And we'll nag you all if we can't hear, just so you  
8 all know. Need big voices.

9 JUROR: She needs to speak up just a little.

10 MS. CASTLEBERRY: Oh, I'm sorry.

11 JUROR: That's okay.

12 BY MS. CASTLEBERRY:

13 Q Officer, can you just tell us what this picture  
14 depicts.

15 A This is after I got on the scene. This is, I  
16 guess, the side view. Right there would be the road,  
17 actually, to the -- to the left, Ribaut Road. And this  
18 is -- I pulled up to the side of it, looking at the  
19 right side of the fire truck.

20 COURT REPORTER: *Right side of?*

21 A The fire truck.

22 Q Okay. And this is more of an angle. This is  
23 showing the rear of the fire truck. And like I said,  
24 the road would be out here. But this is off the right  
25 -- right side of the road on Ribaut Road, the southbound



1 side.

2 Q And Corporal Perry, without getting into any detail  
3 about this, can you just point out the location of the  
4 deceased.

5 A It would be, actually, about right in there, just  
6 right before that wheel.

7 Q So, it would be in front of the rear-right wheel  
8 well?

9 A Yes.

10 Q Thank you.

11 A And this is the rear of it. I'm just getting a  
12 photo. I'm trying to get a 360 of the -- of the whole  
13 fire truck. So, this is the rear of the fire truck.

14 Q Okay. And it was significantly wedged in between  
15 those trees, correct?

16 A Yes, it is.

17 Q And what would -- you've done a lot of these  
18 accident reconstructions and done investigations. What  
19 was your estimate of the damage to the fire truck?

20 A It appeared to be totaled. It had severe front  
21 damage, and even on the sides. It appeared to  
22 definitely be totaled.

23 And this is the rear of it, also. And as you can  
24 see, the -- some of the trash that -- where the -- it's  
25 actually coming from the northbound side, and this is

1 south. And then, tracks are seen cutting across, and  
2 leading right up to the fire truck.

3 Q And that's what you told us before, that the fire  
4 truck had crossed the center line, and gone into the  
5 trees.

6 THE COURT: A little more volume would be  
7 wonderful.

8 MS. CASTLEBERRY: Okay.

9 BY MS. CASTLEBERRY:

10 A Yes, ma'am. Yes, ma'am. And these, I think I got  
11 a little bit better photo of it, also, but the tracks a  
12 little back farther, you can see it crossing the median.

13 Here's some more. You can sort of see it plain.  
14 You can see the tracks there. They're up against that  
15 curb, and just leads up to the fire truck.

16 And this is the roadway. This is going to be  
17 looking north, to -- actually, no, I'm sorry. This is  
18 the southbound lane of Ribaut Road.

19 Q Okay. And that shows some of the traffic  
20 congestion --

21 A Yes.

22 Q -- and some other things that happened. Was it  
23 your understanding that other vehicles were involved in  
24 this collision?

25 A It was a little bit farther south, actually.

1 Q Is that, that same picture, only a closer-up view?

2 A Yes. Yes. And this is the front of the fire  
3 truck, which, you can see, it's got significant damage.

4 Q And that would go along with your testimony that  
5 you believed it was actually totaled as a result of  
6 this?

7 A Yes, ma'am.

8 Q And this is going to be the left side -- the left  
9 front of the vehicle, of the fire truck.

10 Q Okay. And you had told us previously that the  
11 hoses had come down from the fire truck. They had  
12 previously been rolled up or something.

13 A Yes. Yes, ma'am.

14 Q That's a little bit clearer picture of that, right?

15 A Yes, ma'am. Yes, ma'am. Just another side view of  
16 the left side.

17 And this, this also, you can sort of see the -- you  
18 can see the tracks there where he, you know, ran off to  
19 the side of the road there.

20 Q And that would have been right around -- can you  
21 see where I'm pointing at? I guess it would be right  
22 here.

23 A Um-hmm. Yes.

24 This is just a better view of, really, of where the  
25 location -- we've got the store there, but this is just

1 showing the whole fire truck off the road.

2 Q And I noticed here to the left side of the picture,  
3 it looked like there was a tree down.

4 A Yes.

5 Q So, did he actually run through some trees and  
6 cause some other damage through that?

7 A Yes. Yes, he did. He struck several trees.

8 And this is just -- this is showing the -- store  
9 here again.

10 Q And so, there were some police tape there. So,  
11 what was the purpose of roping off those areas?

12 A Just securing the scene where nobody -- nothing  
13 gets -- no evidence gets lost or -- or messed with.

14 Q Okay.

15 A And it was -- it was already like that before I  
16 even got to the scene.

17 Q And what view would that -- I don't know what angle  
18 I'm looking at.

19 A This is sort of, if you remember the one before  
20 where the store was at, --

21 Q Yeah.

22 A -- the store would be, like, right in here. I'm  
23 just looking in the parking lot at the store and taking  
24 photographs.

25 Q And again, without belaboring this point, where

1 would the body have been located?

2 A It would be about right in there.

3 Q That's just a closer up?

4 A It's a closer view, yes. This is the front, again.  
5 Part of up front, basically.

6 Q Corporal, were you there when the tow truck arrived  
7 to take the fire truck away?

8 A I really don't recall. I think I might have been  
9 gone to the hospital, but I'm not a hundred percent sure  
10 on that.

11 Q Okay. And that was a significant task; would you  
12 say?

13 A Yes. Yeah, it -- it was.

14 This is just the back of the vehicle again. And  
15 that's the back of it.

16 Showing a little bit of the -- you can tell the  
17 front and side.

18 Q And the trees down?

19 A Yes. Um-hmm. The tree that was -- that was  
20 struck, knocked down.

21 Pretty much the same thing. As you can see, the  
22 hose and the debris.

23 COURT REPORTER: Speak up just a little.

24 A Okay. All right. Sorry.

25 Q And I think those are all duplicates, too. You can

1 just return to the stand, and I'll ask you some more  
2 questions.

3 A Okay.

4 Q Corporal, when you arrived at the scene, you said  
5 there were other law enforcement personnel there, right?

6 A Yes, ma'am.

7 Q And Mr. Hunt had already been taken away, you said,  
8 by a squad car?

9 A Yes. Um-hmm.

10 Q Do you have an understanding of how he was arrested  
11 there; how he was taken out of the fire truck?

12 A I was told that he was arrested. I guess, he had  
13 some injuries from the collision. And also, there was,  
14 I'm going to say, a few officers that were injured,  
15 also, trying to make the arrest on him.

16 Q Were those officers, to your knowledge, also  
17 transported to the hospital?

18 A Yes, they went to Beaufort Memorial, also.

19 Q How long were you at the scene, approximately?

20 A I was there, I took the photos, and got, you know,  
21 got my -- you know, I talked with the witness. Soon as  
22 I got that, I went to Beaufort Memorial, to talk to Mr.  
23 Hunt. But when I got there, he was sedated, so I was  
24 unable to talk with him.

25 I did get a blood and urine sample from him.

1       Because, at the time, I didn't know if it was, you know,  
2       going to be alcohol-related or whatever. I did do that.

3               And I end up going back to the scene a little later  
4       on. I was probably at the scene until probably about  
5       7:00, 7:00 o'clock that night.

6       Q     So, you said you never actually spoke to Mr. Hunt  
7       that day?

8       A     Not that day, no.

9       Q     Do you have an understanding as to why he was  
10      sedated?

11      A     From -- and this is from the, I guess, the -- I  
12      mean, the --

13               MR. LOVELL: Objection, your Honor. We're about to  
14      get into hearsay.

15      A     Okay.

16               MS. CASTLEBERRY: Your Honor, we would just note  
17      that there was part of his investigation he was to find  
18      out certain information about Mr. Hunt.

19               THE COURT: I understand. I understand. It's  
20      still hearsay. Sustained.

21               BY MS. CASTLEBERRY:

22      Q     So, you said you stayed 'til about 7:00 o'clock.

23      A     Yes. Um-hmm.

24      Q     And did you perform any other duties that day with  
25      respect to this accident?

1 A No, not -- not that day.

2 Q Later, did you?

3 A On the 27th, which was three days later, Mr. Hunt  
4 was -- at some point, he was transported to MUSC, and we  
5 went up there, because he was about to get released.  
6 So, we went to wait 'til he got released, and we took  
7 him into custody, and brought him back to Beaufort  
8 County Detention Center.

9 MS. CASTLEBERRY: Okay. I don't have any further  
10 questions of this witness.

11 THE COURT: Cross-examination.

12 MR. LOVELL: Very briefly, your Honor.

13 THE COURT: Sure.

14 CORPORAL JAMIE PERRY

15 CROSS-EXAMINATION, BY MR. LOVELL:

16 Q Good afternoon, Corporal. I'm Gary Lovell.

17 A How are you doing, sir?

18 Q Looking at the photos of this fire truck, would it  
19 be fair to say that, when it first left the roadway, it  
20 was in the southbound lanes?

21 A It was northbound.

22 Q Okay.

23 A It was in the northbound.

24 Q Okay. On the opposite side of where it ended up.

25 A Yes, sir. Yes, sir.



1 Q So, it had to go from the northbound lane across --  
2 I think there's a center dividing lane.

3 A Yes.

4 Q Two lanes of southbound, across the curbing, over  
5 the curbing, some distance down that, into all those  
6 trees, and then, come to rest.

7 A Yes, sir.

8 Q So, it must have been moving on pretty fast at that  
9 point, when it left the travel portion of the roadway.

10 A Yes. I don't know the exact speed, but I know it's  
11 probably -- the fire truck probably has that speed.

12 Q Yeah. I saw in the MAIT report, 56 was the  
13 minimum. Does that sound about right?

14 A That's probably about right, yes, sir.

15 Q And he had also had some other collisions before he  
16 ever got to this point.

17 A Yes, sir.

18 MR. LOVELL: That's all. Thank you, your Honor.

19 THE COURT: All right. Re-direct?

20 MS. CASTLEBERRY: No, your Honor, we have no re-  
21 direct.

22 THE COURT: Is this witness free to leave?

23 MS. CASTLEBERRY: Yes, he is free to leave. Thank  
24 you, Corporal.

25 THE COURT: Any objection?

1 MR. LOVELL: None, your Honor.  
2 THE COURT: You are free to go.  
3 A Thank you.  
4 THE COURT: Call your next witness, please.  
5 MR. HOYLE: Your Honor, at this time, Plaintiff  
6 calls Dr. Michael Caplan to the stand.  
7 THE COURT: Okay.  
8 BAILIFF: This way, sir. Come forward and be  
9 sworn, please, sir.  
10 MADAM CLERK: Doctor, right here. Would you please  
11 place your left hand on the Bible, and raise your right?  
12 Do you solemnly swear or affirm that the testimony  
13 you're about to give in this matter is the truth, the  
14 whole truth, and nothing but the truth, so help you God?  
15 DOCTOR MICHAEL JEFFREY CAPLAN: I do.  
16 MADAM CLERK: Thank you. Have a seat here, sir.  
17 Say your name and spell your name for us.  
18 DOCTOR MICHAEL JEFFREY CAPLAN: My name is Michael  
19 Jeffery Caplan. Last name is spelled, C/a/p/l/a/n.  
20 DR. MICHAEL JEFFREY CAPLAN  
21 DIRECT EXAMINATION, BY MR. HOYLE:  
22 Q Doctor, good afternoon.  
23 A Good afternoon.  
24 Q Doctor, where are you currently employed?  
25 A I'm currently employed at the New York Suffolk

1 County Office of the Medical Examiner in Long Island,  
2 New York.

3 Q You're a long way from home, Doctor.

4 A Yes, I am.

5 Q Now, just so we're all clear at the outset, are you  
6 charging any party, either the Plaintiff or the  
7 Defendant, for your time being here in court today to  
8 testify?

9 A No, I'm not.

10 Q But my firm, Motley Rice, has agreed to reimburse  
11 your travel expenses. Is that fair?

12 A Yes.

13 Q And just so we're all clear, you flew coach,  
14 correct?

15 A Yes, sir, I did.

16 Q Okay. Just making sure. Doctor, before we get  
17 into your background, did you give a deposition in this  
18 case?

19 A No, I did not.

20 Q So, we're going to hear some things for the first  
21 time here today. Is that fair?

22 A Yes.

23 Q Okay. Can you please give the Court and jury the  
24 benefit of your education.

25 A Yes. So, I obtained my undergraduate degree in

1 forensic science at Michigan State University in 1983.  
2 And forensic science really is -- is the method of  
3 science that's applied to anything involving the law or  
4 public interest or public safety.

5 After I obtained my degree in forensic science, I  
6 then went to medical school. I went to the University  
7 of Connecticut School of Medicine, where I graduated  
8 with an M.D. degree in 1987.

9 And following that, I then did a residency in  
10 pathology, the specialty of medicine which involves how  
11 the human body reacts to disease. That was at the  
12 University of Michigan from 1987 to 1992.

13 Following that, I did a one-year fellowship in  
14 forensic pathology, again, using pathology; but  
15 addressing matters of public interest and health and  
16 safety. That was at the New York City Office of the  
17 Chief Medical Examiner.

18 And I also completed a one-year fellowship in  
19 pediatric pathology, and that's dealing specifically  
20 with diseases of children, infants, and unborn babies,  
21 and that was at the University of Pittsburgh Medical  
22 Center from 2003 to 2004.

23 Q Doctor, are you licensed to practice medicine in  
24 any state?

25 A Yes, I am.

1 Q Which states, please?

2 A Currently, I'm licensed to practice in the State of  
3 New York.

4 Q Previously, were you licensed to practice medicine  
5 in the State of South Carolina?

6 A Yes, I was.

7 Q What years were you licensed here, sir?

8 A I was licensed during the years of 2004 through  
9 2008, and 2011 through 2014.

10 Q Do you hold any board certifications?

11 A Yes, I do.

12 Q And what are those, sir?

13 A I'm certified by the American Board of Pathology in  
14 anatomic pathology, clinical pathology, forensic  
15 pathology, and pediatric pathology.

16 Q And what does it mean for a medical doctor to be  
17 board certified? Can you explain that to this Court and  
18 jury.

19 A Yes. So, board certification is -- it's a  
20 qualification that's -- the criteria are put out by the  
21 individual specialty board in the field. So, for  
22 example, some boards, there's an American Board of  
23 Internal Medicine, Board of Surgery. And Pathology has  
24 an American Board of Pathology. And so, to be board  
25 certified by the American Board of Pathology, you have

1 to fulfill two requirements. One is that you have to  
2 complete a training program that's approved by the  
3 board, and also, by what we call the ACGME, American  
4 Council on Graduate Education. [sic]. And also, you have  
5 to sit for an examination, and receive a passing score.  
6 If you fulfill both of those requirements, the  
7 completion of the -- of the approved training program  
8 and pass the examination, then, you are certified by the  
9 American Board of Pathology in that specialty.

10 Q Doctor, have you offered any articles that have  
11 been published in the peer review journals.

12 A Yes, I have.

13 Q And approximately how many articles have you  
14 published in the peer review journals?

15 A I have co-authored somewhere around -- about ten.  
16 Eight to ten.

17 Q And Doctor, what do you consider to be your area of  
18 clinical expertise?

19 A I would say that -- that my area of -- of strongest  
20 specialty would be pediatric forensic pathology, and  
21 specifically, head injuries in -- in infants and  
22 children.

23 Q Now, Doctor, have you been qualified in any court,  
24 criminal or civil, to render an expert opinion?

25 A Yes, I have.

1 Q Does that include states here in -- does that  
2 include South Carolina?

3 A Yes, it does.

4 Q In what field have you been so qualified to testify  
5 as an expert witness in those courts, including here in  
6 South Carolina?

7 A I have been -- I have been approved as -- I have  
8 been qualified as an expert in forensic pathology, and  
9 also, in pediatric pathology.

10 MR. HOYLE: Your Honor, at this time, Plaintiff  
11 moves to have Dr. Caplan qualified to render opinions in  
12 the field of forensic pathology.

13 MR. LOVELL: No objection, your Honor.

14 THE COURT: Very well. All right. Ladies and  
15 gentlemen, let me tell you what's just occurred, and I  
16 will give you more instruction about this when I give  
17 you the concluding instruction. But I will tell you, at  
18 this juncture, that, normally, under our rules of  
19 evidence, witnesses are not allowed to testify regarding  
20 their opinions or their reasons for those opinions.

21 There is an exception, when, by virtue of someone's  
22 knowledge, experience, training, fashion, they have  
23 become an expert in some field. Typically, it is an art  
24 or science. And those witnesses deemed to be expert  
25 witnesses are allowed to testify regarding to their

1 opinions within their expertise, and the reasons for  
2 those opinions.

3 Ladies and gentlemen, as I say, I will give you  
4 instructions regarding expert opinion testimony when I  
5 give you the concluding charge. But I will tell you now  
6 that expert opinion testimony is given for the purpose  
7 of helping you understand the evidence, and of course,  
8 not for the purpose of controlling judgment.

9 You may proceed.

10 BY MR. HOYLE:

11 Q Doctor, can you explain to the jury what forensic  
12 pathology is.

13 A Yes. So, forensic pathology is -- is a specialty  
14 of pathology. And I was saying before that pathology is  
15 a specialty of medicine that deals with the body's  
16 reaction to disease. Disease being anything apart from  
17 the state of normal health. So, infection or cancer  
18 would be a type of disease.

19 Forensic pathology come from the word, forensics,  
20 which means forum or public place. So, forensic  
21 pathology uses the methods and the techniques of  
22 pathology to address, specifically, matters that may be  
23 of public interest, that is, that may involve safety,  
24 public health, anything that could be of -- could  
25 potentially affect the community.



1 Q Is one of the things that you do as a forensic  
2 pathology -- is one of the things you do as a forensic  
3 pathologist is conduct autopsies?

4 A Yes, it is.

5 Q Approximately how many autopsies have you conducted  
6 in your career as a forensic pathologist?

7 A I would estimate that I've either conducted or  
8 personally supervised, directly supervised, somewhere  
9 between 2,300 and 2,500 autopsies. Somewhere in that --  
10 in that range.

11 Q More than 2,000.

12 A Yes, more than 2,000.

13 Q Doctor, in a very general sense, what is an  
14 autopsy?

15 A So, an autopsy comes from the Greek word, which  
16 means to see for oneself or see with one's own eyes.  
17 And it's an examination that's performed by a  
18 pathologist, where that pathologist is seeing, with his  
19 or her own eyes, the disease and injuries on a deceased  
20 body. So, sometimes, you'll hear the word *necropsy*,  
21 which means a decedent's body. But autopsy and necropsy  
22 are similar terms.

23 And so, an autopsy is the examination of the  
24 external surface of that person's body, which involves  
25 documenting any identifying features, scars, tattoos,

1 moles, and any injuries that may be present on the  
2 outside. And for a forensic pathologists, if there's  
3 clothing, then, the clothing would be examined, also,  
4 because that may be -- have some value for evidence.

5 Then, after the external examination is done, then,  
6 an internal examination is performed where, usually, a  
7 Y-shaped incision is made in the body; the rib cage is  
8 removed; and then, the organs and the chest and the  
9 abdomen are examined, also, for evidence of disease and  
10 injury. And also, the organs in the neck are examined.

11 And also, the scalp is reflected, and the top of  
12 the skull is removed to allow examination of the brain  
13 and it's coverings, also for disease and injury. And  
14 also, as part of an autopsy is that fluids and tissues  
15 are collected to look at under the microscope, possibly,  
16 for additional diagnoses; and also, to collect for  
17 examination for evidence of sort of intoxication or  
18 poisoning for toxicology testing.

19 And then, finally if infection is suspected,  
20 samples might be submitted to the microbiology  
21 laboratory. So that, in essence, is -- summarizes an  
22 autopsy.

23 Q And thank you for that answer, Doctor. What is the  
24 objective that you're trying to accomplish by doing  
25 those things you just told this jury about in an

1 autopsy?

2 A I would say that the objective in an autopsy is to  
3 assist in reconstructing the events which led to a  
4 person's death; that you are trying to help form the  
5 picture of what that individual was doing at the time  
6 before they died. So, -- so, you're really trying to  
7 help work in the context of all the other information to  
8 give that picture. You're trying to record a person's  
9 underlying diseases, any underlying injuries, any  
10 intoxications, and to help decide what combination of  
11 those injuries, diseases, led to that person's death.

12 Q Now, Doctor, when did you become the chief medical  
13 examiner up there at Suffolk County, New York?

14 A I started in July of 2014.

15 Q And prior to July of 2014, where did you work?

16 A Prior to that, I was working at Medical University  
17 of South Carolina, MUSC, from 2011 to 2014.

18 Q I thought I detected a little bit of a southern  
19 accent there. Doctor, what was your job title at the  
20 Medical University?

21 A At the Medical University, I was an associate  
22 professor in the Department of Pathology and Laboratory  
23 Medicine.

24 Q Now, Doctor, were you the attending forensic  
25 pathologist who conducted the autopsy on Justin Miller?